

C8EAABEJH

Hearing

1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

-----x

3 UNITED STATES OF AMERICA,

4 v.

10 CR 553 (SHS)

5 MONDHER BEJAOUI,

6 Defendant.

7 -----x

8 New York, N.Y.  
9 August 14, 2012  
10:10 a.m.

10 Before:

11 HON. SIDNEY H. STEIN,

12 District Judge

13  
14 APPEARANCES

15 PREET BHARARA

16 United States Attorney for the  
17 Southern District of New York

ALEXANDER WILSON

17 RACHEL KOVNER

18 Assistant United States Attorney

19 JOSHUA L. DRATEL

20 Attorney for Defendant Bejaoui

C8EAABEJH

Hearing

1 (Hearing resumed)

2 THE COURT: All right. Put Dr. Cochrane on the stand.  
3 He is here. Please be seated. Apparently, the marshals had a  
4 delay in bringing the defendant in.

5 Good morning, Dr. Cochrane. You remain under oath,  
6 you understand that.

7 All right. Let's continue with the  
8 direct-examination.

9 How much longer do you think you are going to have?

10 MR. WILSON: Hoping for 45 minutes, your Honor.

11 DR. ROBERT E. COCHRANE,

12 called as a witness by the Government,

13 having been PREVIOUSLY duly sworn, testified as follows:

14 DIRECT EXAMINATION

15 BY MR. WILSON:

16 Q. Dr. Cochrane, when we left off yesterday we were talking  
17 about some of the prison calls you reviewed. One final  
18 question on that topic. Are patients at Butner made aware that  
19 their calls are being record?

20 A. Yes, they are.

21 Q. How?

22 A. In two ways. When they enter the institution they are  
23 given what's called an inmate handbook that has information  
24 about that. And secondly posted above every telephone in the  
25 institution that inmates use in English and Spanish it's posted

C8EAABEJH

Dr. Cochrane - Direct

1 that all of these calls are monitored.

2 Q. Now, you mentioned yesterday that you often use  
3 psychological testing when you are performing competency  
4 evaluations. Did you conduct any such tests on Mr. Bejaoui?

5 A. No, I did not.

6 Q. Why not?

7 A. I did not because he initially had indicated that he was  
8 unable to do so because of his pain and inability to  
9 concentrate and that then it became apparent as time went on  
10 during the evaluation he was presenting as too impaired and  
11 unable or unwilling to do so. And then, again, as I think I  
12 mentioned the other day, after the March 8 interview he wasn't  
13 even speaking to me at all. So it had become apparent that I  
14 was not going to be able to administered a battery of tests to  
15 Mr. Bejaoui.

16 Q. Do you have Dr. Channel's report from Devens?

17 A. I do.

18 Q. Defendant's Exhibit C for the record and page 10, paragraph  
19 labeled "psychological test results".

20 A. Yes.

21 Q. What does that indicate?

22 A. Would you like me to read it?

23 Q. Yes.

24 A. Attempts to complete psychological testing with Mr. Bejaoui  
25 were met with repeated complaints of pain and a total lack of

C8EAABEJH

Dr. Cochrane - Direct

1 cooperation. As a result, no psychological testing was  
2 completed.

3 Q. You can set that one aside for the moment, sir. You  
4 reviewed Dr. Krueger's report as well, correct?

5 A. Yes, I did.

6 Q. Did Dr. Krueger perform any psychological tests?

7 A. I believe he gave a couple of tests, yes.

8 Q. Why don't you pull that out. It's Exhibit B and look at  
9 page 5. If you look at the bottom paragraph on that page --

10 A. Sorry. Page five?

11 Q. Yes, sir.

12 A. Yes.

13 Q. That paragraph is entitled a mini mental status examines?

14 A. Correct.

15 Q. What does that paragraph indicate about that type of  
16 examination?

17 A. This is a cognitive screening test, of course, and I  
18 believe it was given on two occasions and on both occasions,  
19 especially the second occasion in April, he received an  
20 extremely low score.

21 Q. What impact did those results have on your diagnosis of the  
22 defendant?

23 A. Again, it was another what I believe is an inconsistency  
24 that would suggest a score of four, for example, out of 30  
25 would suggest someone is incredibly impaired, late stages

C8EAABEJH

Dr. Cochrane - Direct

1 dementia, unable to get hardly any of the items correct that  
2 was consistent with the numerous other pieces of data that he  
3 was cognitively intact.

4 Q. Turning to the next paragraph on page 6, it's number two,  
5 the Georgia Core Competency Test 1992 Revision.

6 A. Yes.

7 Q. What does that indicate about the test Dr. Krueger  
8 administered?

9 A. Essentially, he performed extremely poorly on that test as  
10 well.

11 Q. And what impact, if any, does that have on your diagnosis?

12 A. Again, very unusual you don't typically see scores that  
13 low. So I guess, again, it was another factor to suggest this  
14 seems inconsistent with this individual's level of intellect  
15 and knowledge.

16 Q. And looking one more paragraph down to the Mid Hudson  
17 Forensic Psychiatric Center Fitness Assessment Instrument, are  
18 you familiar what that test?

19 A. I am not.

20 Q. What is the results that are reported on that test?

21 A. On this instrument which appears to be a local instrument I  
22 don't believe it's published in the literature but it appears  
23 to be a local instrument, so all I can tell you is that they  
24 indicate he failed 14 or 15 indicators of competence on this  
25 test which I guess would suggest to anyone that's a very poor

C8EAABEJH

Dr. Cochrane - Direct

1 score for performance.

2 Q. Just to point you to the line below where it indicates 14  
3 or 15 indicators some items that are identified, can you state  
4 what those are?

5 A. Includes what are called 7 critical items such as  
6 orientation, including time, place and person, any one of which  
7 would result in failure on this instrument.

8 Q. And what impact, if any, does that have on your diagnosis?

9 A. On my diagnosis?

10 Q. Yes.

11 A. Well, I am not sure I understand your question. What do  
12 these critical items --

13 Q. No. What does the defendant's reported performance on this  
14 exam, what impact does that have any, if any, on your  
15 diagnosis?

16 A. Again, it was consistent with his other performance on  
17 these questionnaires or tests in which he did extremely poorly,  
18 much lower than you'd expect given or even if he had the  
19 reported diagnosis that others have reported.

20 Q. And what about Dr. First, did he perform any psychological  
21 tests?

22 A. I believe so, yes.

23 Q. If you look at his report at page thirteen and that defense  
24 Exhibit A.

25 A. Page 13?

C8EAABEJH

Dr. Cochrane - Direct

1 Q. 13, yes.

2 A. Yes, I am there.

3 Q. And there's a paragraph titled "mini mental status  
4 examination, MME"?

5 A. That's right.

6 Q. What does that paragraph indicate?

7 A. I believe -- give me a moment here. He scored a total of  
8 nine points on the mini mental status on this occasion. Again,  
9 as I think was, perhaps, testified by Dr. First, he didn't know  
10 he was in New York. He was disoriented. He performed  
11 essentially extremely poorly on this measure as well.

12 Q. And again, same question as before, what impact, if any,  
13 does that have on your diagnosis?

14 A. Well, initially, again, I would expect a severe dementia or  
15 malingering was a possibility and I ultimately concluded as you  
16 know, that this was so inconsistent to the other data I  
17 concluded it was an indicator of malingering.

18 Q. Turn to the next page, to page 14 the section entitled  
19 Georgia Core Competency Test.

20 A. Yes.

21 Q. That's same test as Dr. Krueger administered?

22 A. Correct.

23 Q. What does this paragraph indicate about defendant's  
24 performance?

25 A. There's no score but Dr. First documents that he performed

C8EAABEJH

Dr. Cochrane - Direct

1 extremely poorly on this measure. Again, not knowing who his  
2 attorneys were, what the judge, attorney and some factual  
3 things about court, having an extremely poor understanding of  
4 this kind of information.

5 Q. And what impact does that have on your diagnosis, if any?

6 A. Well, again, it was inconsistent with a number of things.  
7 So I didn't give it much weight as to the credibility of his  
8 accounts during this instrument during the administration of  
9 that instrument.

10 Q. Do any of the tests administered by Dr. Krueger or Dr.  
11 First address malingering?

12 A. No, they do not.

13 THE COURT: Well, when you say "addressed  
14 malingering", malingering isn't the conclusion you either draw  
15 or don't draw on the basis of other tests. What type of tests  
16 directly, are there tests that directly address malingering?

17 THE WITNESS: Correct. That was my understanding of  
18 the question. The tests does not address malingering with  
19 indices or built-in scales to attest.

20 THE COURT: You didn't apply such tests either?

21 THE WITNESS: No, I was not able to give any tests  
22 with Mr. Bejaoui. But none of these tests have these embedded  
23 validity indicators as how I was understanding the question.

24 BY MR. WILSON:

25 Q. Are there any competency tests that try to account for



C8EAABEJH

Dr. Cochrane - Direct

1 malingering?

2 A. Yes.

3 Q. Could you give an example?

4 A. Most notable is the most now widely used and validated test  
5 called the Evaluation of Competence to Stand Trial revised by  
6 Richard Rogers, the author of that instrument. And on that  
7 competency measure there is scales that screen for feigning of  
8 symptoms and feign of incompetence.

9 Q. Are there any tests that are designs just to determine  
10 whether a patient is malingering?

11 A. Several incompetent measures. You have a number of tests  
12 now that are on the market that assess for both malingering of  
13 cognitive symptoms and psychiatric symptoms. Some tests have  
14 what are called am embedded measures, like Dr. First testified  
15 to the MMPAI that have what are called embedded validity  
16 measures that look for exaggerated symptoms primarily.  
17 However, there are other tests designed, specifically, to test  
18 for exaggeration of psychiatric symptoms, memory impairment and  
19 cognitive disturbances.

20 Q. If the defendant had been willing or able to be tested at  
21 Butner would you have performed tests like those with him?

22 A. Yeah, I typically do and had I been able to with him I am  
23 sure I would have.

24 Q. You diagnosed the defendant as malingering, however,  
25 without having been able to give those tests?

C8EAABEJH

Dr. Cochrane - Direct

1 A. That's correct.

2 Q. Why were you comfortable doing that?

3 A. Because I believed there was multiple sources of data to  
4 support that opinion irrespective of psychological testing.

5 Q. Is it unusual for you to diagnose someone as malingering  
6 without being able to give them a malingering test?

7 A. No. Malingering tests can be useful, certainly, and it's  
8 a, again, one data point but you are looking at the  
9 accumulative weight of the evidence from a variety of sources  
10 of information. So there have been main occasions which I have  
11 firmly concluded that an individual is malingering without  
12 administering psychological tests.

13 Q. In light of all the evidence you have regarding this  
14 particular defendant are you confident in your diagnosis of  
15 malingering?

16 A. I am.

17 THE COURT: Well, I asked the question I think of Dr.  
18 First, your opinion of malingering is within a reasonable  
19 degree of medical certainty?

20 THE WITNESS: Reasonable degree of scientific  
21 certainty. I am not a medical doctor, so we have a slight  
22 variation of terms.

23 THE COURT: Is it possible to put a degree of  
24 confidence on that?

25 THE WITNESS: Yes. I am reluctant to give a number,

C8EAABEJH

Dr. Cochrane - Direct

1 some kind of probability number fearing it might be misleading.  
2 I prefer to use adjectives and I am extremely confident in my  
3 diagnosis of malingering, very confident. I would use words  
4 like that to describe the level of confidence I have.

5 THE COURT: All right. Thank you.

6 BY MR. WILSON:

7 Q. Just to be clear are you also extremely confident in your  
8 diagnosis of your competency determination?

9 A. I am very confident in my competency determine as well.

10 Q. Yesterday we discussed some disagreements.

11 THE COURT: Excuse me. Proceed.

12 BY MR. WILSON:

13 Q. Turning to another subject, doctor. Yesterday we discussed  
14 some disagreements between yourself and Dr. First in your  
15 analysis. Like to just do a couple more now. Dr. First had  
16 talked about the defendant's psychotic symptoms increasing at  
17 Butner when his risperidol began to be withdrawn. Do you  
18 remember him talking about that?

19 A. Yes I do.

20 Q. If you look at your report which is Defense Exhibit D on  
21 page 14, the first full paragraph and just take moment to  
22 review all that.

23 A. Where it begins "during a mental".

24 Q. Yes, correct. And my reading of that is that the  
25 defendant's dose of risperidol was reduced starting on February

C8EAABEJH

Dr. Cochrane - Direct

1 9, 2012. Let me know if that's right.

2 A. Yes. On February 9, following that meeting his dose of  
3 risperidol was reduced and ultimately discontinued.

4 Q. Now, had the defendant presented with psychotic symptoms  
5 prior to this a date or only afterwards?

6 A. Prior. Not only at our institution, of course, with Dr.  
7 Krueger and he presented that way with Dr. Channel at Devens.

8 Q. How much was his risperidol reduced at this time?

9 A. His risperidol was reduced from four milligrams to two  
10 milligrams for one week and then discontinued entirely after  
11 that. He was tapered, in other words.

12 Q. And just to be clear for anyone who may not be fully  
13 familiar with the report, the original dosage of risperidol I  
14 believe is on page 12 in the bottom paragraph about halfway  
15 down?

16 A. Yes. Risperidol two milligrams twice a day, so that's four  
17 milligrams a day.

18 Q. Going back to page 14 and looking at the next paragraph  
19 which is quite long and, perhaps, you can skim it. It appears  
20 to indicate the defendant was reporting psychotic symptoms  
21 starting on or on February 13, 2012, is that correct?

22 A. Yes. He was reporting psychotic symptoms.

23 Q. Now, in your experience is it common for patients with  
24 actual psychosis to experience a significant increase in  
25 psychotic behavior within four days of this sort of partial

C8EAABEJH

Dr. Cochrane - Direct

1 reduction in dosage of risperidol?

2 A. With just a partial reduction?

3 Q. The type of reduction we've just discussed.

4 A. That would be possible but unusual.

5 Q. And was the defendant told that the risperidol was being  
6 discontinued?

7 A. He was told that, yes.

8 Q. When was he told that?

9 A. He was told on the 9th, the day that that taper began.

10 Q. Have you ever evaluated any malingerers patients who  
11 exaggerated their symptoms even more after their medication was  
12 changed?

13 A. Yes, I have.

14 Q. I believe Dr. First suggested yesterday that if the  
15 defendant had been malingerer Dr. First would have expected  
16 him to more readily volunteer information about his psychotic  
17 symptoms based on your experience with malingerers patients.  
18 Do you agree with that?

19 A. No, because I've seen a wide range of different types of  
20 people who malingers. Some will spontaneously discuss symptoms.  
21 Some will act like they're afraid and only report them when  
22 directly asked. I've seen the gamut. Some report more  
23 symptoms over time, especially when they think doctors aren't  
24 believing what they're saying. I've seen such a wide  
25 variability that, no, I would concur.

C8EAABEJH

Dr. Cochrane - Direct

1 Q. I think your last point there, I believe Dr. First had  
2 expressed some doubt that if the defendant was actually  
3 malingering he wouldn't have waited so long to tell evaluators  
4 about his supposedly schizophrenic brother. Do you disagree  
5 with that based on what you just said?

6 A. Well, again, I've seen many people up the anti, so to  
7 speak, or embellish even further, again, once it's becoming  
8 apparent that people are doubting them or questioning the  
9 voracity of their claim. So, no, I don't find that unusual at  
10 all.

11 Q. Now, Dr. First has also argued that your diagnosis is  
12 incorrect because there is no secondary gain for the defendant  
13 to malingering. Do you believe that's accurate?

14 A. No. It appears that there very well may be secondary gain  
15 in this case.

16 Q. What type of secondary gain do you think may be present  
17 here?

18 A. Well, most notably the possibility of deportation and  
19 immigration, continued immigration problems in Mr. Bejaoui's  
20 case.

21 Q. How did you become aware of that?

22 A. How did I become aware of the deportation issue? I recall  
23 his wife had conveyed to Dr. Herbel about the immigration  
24 problem. In fact, he was pulled over I believe by a police  
25 officer at one point she conveyed, gotten into some trouble

C8EAABEJH

Dr. Cochrane - Direct

1 because he wasn't supposed to be out of state or something  
2 along those lines and she had indicated that the immigration  
3 issue not resolved. So that was the first time that I was sort  
4 of clued into that.

5 And then Ms. Kovner had conveyed to me that  
6 deportation may very well be an issue, especially, if there's a  
7 conviction in this case.

8 Q. Have you had other patients who malingered in order to  
9 avoid potential deportation?

10 A. Yes, I have.

11 Q. Now, in addition to malingering --

12 THE COURT: The costs of malingering to avoid  
13 immigration are spectacularly high. It involved spending years  
14 in the federal medical institution.

15 THE WITNESS: I am not sure.

16 THE COURT: And separation from family. The only  
17 evidence in this record is that he loves his wife. What would  
18 be his reason to doubt that? In references to his children.  
19 He's an extraordinarily perverse calculation it seems to me to  
20 trade off on the one hand years in a mental institution,  
21 federal medical facility versus if and when it happens fighting  
22 removal from the United States on the merits and whatever legal  
23 arena is available. I don't think that's a rational trade-off.

24 THE WITNESS: I would respectfully disagree, your  
25 Honor. I believe people often have the assumption they'll be

C8EAABEJH

Dr. Cochrane - Direct

1 released from custody if the case goes away and in fact I don't  
2 believe Mr. Bejaoui in all likelihood would remain if he's  
3 found to be not restorable there is a good chance he will not  
4 able to be civilly committed because he not, from my  
5 understanding, his history doesn't reflect any dangerous  
6 behavior towards others.

7 So my understanding and the assumption, again, of the  
8 defendant is the most important thing, is that there's a good  
9 likelihood that he would be released and not confined for years  
10 in a mental health institution

11 THE COURT: Would be released and not face the  
12 criminal charge here if they're found not restorable.

13 THE WITNESS: If they are found not restorable. In  
14 fact, I've seen plenty of such cases and we've done the  
15 assessment of dangerous under 4246 and found the person not  
16 dangerous. Those people are released to the community.

17 THE COURT: All right. Are there observations in  
18 report because I don't recall seeing them, but they may be  
19 there of his behavior in your institution or for that matter in  
20 Devens if you have the Devens report, when he is not undergoing  
21 tests? In other words, does he have the same affect on a  
22 day-to-day basis in Butner that he has here?

23 THE WITNESS: In Butner and in Devens there was  
24 relative consistency as very impaired, animated and lots of  
25 complaints. There were times again that his mood would shift



C8EAABEJH

Dr. Cochrane - Direct

1 and he'd be quiet sullen and refused to talk to us which is  
2 somewhat similar to his appearance today. So while there's  
3 fluctuation there is general consistency of a quite an impaired  
4 individual with numerous complaints and numerous, presenting  
5 with numerous problems. He was very vocal about that.

6 THE COURT: Well, did you or your staff observe what's  
7 present here? I mean a sense of vacancy, a sense of  
8 nonparticipation, a sense of complete withdrawal?

9 THE WITNESS: Not on a consistent basis. I mean  
10 sometimes, for example, I recall Dr. Herbel noting he went to  
11 his room one day and he was just kind of sitting there quietly  
12 much like he is now but not on a consistent basis, no.

13 THE COURT: All right. Thank you.

14 MR. WILSON: Can I just have one moment, your Honor?  
15 There may be a call that should shed some light on this.

16 THE COURT: Yes.

17 (Pause)

18 MR. WILSON: I am not sure if really does. If we find  
19 it we'll come back but at lease for the moment.

20 Q. Doctor, I want to turn to your other diagnosis of the  
21 defendant as to a mental disorder which was adjustment  
22 disorder, correct?

23 A. Yes.

24 Q. Now, are the symptoms of his adjustment disorder the type  
25 that would render someone incompetent to stand trial?

C8EAABEJH

Dr. Cochrane - Direct

1 A. I've never seen that to be the case, no.

2 Q. Did you form an opinion as to whether the defendant is able  
3 to understand the nature and consequences of proceedings  
4 against him and to assist properly in his defense?

5 A. Yes, I reached such a conclusion.

6 Q. What conclusion did you reach?

7 A. I've reached the conclusion that, yes, he did have the  
8 capability, maybe not the willingness but the capability of  
9 demonstrating the understanding of the nature of the case, the  
10 consequences and what takes place during the proceedings and to  
11 assist counsel, yes.

12 Q. Could you summarize the basis for that opinion?

13 A. Let's see. First, while I do believe he suffers from  
14 distress and some problems he does not suffer from a  
15 significant mental illness that would -- symptoms of which  
16 would interfere with his competency. That's one aspect.

17 Secondly, he demonstrated both in comments he made  
18 casually during conversations as well as on the phone and to  
19 other individuals in other settings, he made several statements  
20 of a legal nature that suggest that he understands at least  
21 basic, some basic legal proceedings. Of course, no one was  
22 able to elicit what is the role of a judge and things like  
23 that. But there is lots of indirect evidence about his  
24 comments of a legal nature coupled with the fact he used very  
25 sophisticated terms, lots of analogies, metaphors. He was able

C8EAABEJH

Dr. Cochrane - Direct

1 to demonstrate his intellectual level sufficiently to give me  
2 confidence, yes, he has a factual understanding and he  
3 understands what's going on in court from a cognitive  
4 standpoint.

5 Also he, as the Court and others have pointed out, had  
6 that ability to communicate here in court and to work with his  
7 attorney to the some point in time and there's been no  
8 significant intervening event or illness that would explain how  
9 he is now amnesic for that. Even if the major depression of  
10 his psychosis were true those, certainly, would not explain how  
11 he lost all of his memory for those pieces of information.

12 MR. WILSON: I want to play one small clip on this  
13 topic. Could we play February 15, 2012. The transcript is a  
14 Government Exhibit 14. It's six p.m. between the defendant and  
15 his wife.

16 THE COURT: Government Exhibit 14?

17 MR. WILSON: Yes.

18 THE COURT: What page?

19 MR. WILSON: It'll be page 4, your Honor.

20 (Audiotape played)

21 BY MR. WILSON:

22 Q. Doctor, you find that clip to be relevant in any way to the  
23 question of the defendant's competence?

24 A. Yes.

25 Q. Doctor, how do you -- what relevance do you find in that

C8EAABEJH

Dr. Cochrane - Direct

1 clip?

2 A. Well, he clearly understands what a court of law is. He's  
3 indicating he did not directly receive the dismissal on the  
4 state charge. He understands what that word means too,  
5 apparently, based on his responses. So he demonstrates that he  
6 understands how certain things operate in a court of law which  
7 again is completely contrary to his reported inability to  
8 understand hardly anything in the court.

9 Q. I am going to show you what's Government Exhibit 11 which  
10 is a transcript of a call that we heard yesterday. I am just  
11 going to point you to a particular place. And this is  
12 something we looked at yesterday, although I don't believe with  
13 you, sir, but just want to point it out so you can comment on  
14 it. And it's on page 6. The date of this is February 9 and  
15 it's Government Exhibit 11 and it's page 6 line 34 to 37. You  
16 may want to go back up to 28 for a little context, perhaps.

17 A. Okay.

18 Q. See the reference to 34. Oh, we're going to take you to a  
19 federal place so we can help you. Now they're telling me there  
20 is a fraud.

21 is that relevant to in your view to defendant's  
22 competence?

23 A. It seems to suggest he understands he's charged with a  
24 fraud.

25 Q. Now, let me show you Government Exhibit 23 you'll be

C8EAABEJH

Dr. Cochrane - Direct

1 looking at page five, lines 28 to 38.

2 A. Sorry. What page?

3 Q. Page five, lines 28 to 38. Just take a minute to look at  
4 that.

5 MR. DRATEL: What's the date?

6 MR. WILSON: The date is the 12th of March. The call  
7 is at 5:26 p.m.

8 MR. DRATEL: What page?

9 MR. WILSON: Page 5, lines 28 to 37.

10 Q. Again, this is a call that we heard yesterday. Do you find  
11 that portion you just read relevant to the defendant's  
12 competency?

13 A. Well, what that shows me or demonstrates to me is that he  
14 understands the power of a subpoena to have information  
15 presented that might be in some way useful to his case through  
16 the use of his attorney.

17 Q. Why would that be relevant to the competency determination?

18 A. Again, this is one of the indirect pieces of evidence that  
19 I thought there were several of which which demonstrated he  
20 does have -- despite how he did on the George core test and  
21 during interviews with everyone he does have that  
22 understanding. He has that cognitive ability.

23 Q. I am going to show you Government Exhibit 17. I'd like you  
24 to look at page two around line 16. The date is February 22 at  
25 6:37 p.m. again February 17, this is the defendant and his

C8EAABEJH

Dr. Cochrane - Direct

1 wife.

2 MR. DRATEL: Page two?

3 MR. WILSON: Page two, line 16. And then I would go  
4 and read through page three down to call it 17 for  
5 completeness.

6 (Pause)

7 THE WITNESS: Yes.

8 Q. Apologize. Having read that and this is going back to the  
9 earlier question about the motivation and the results of an  
10 incompetency finding, do you draw any conclusions from this  
11 about the defendant's awareness of the possibilities if he's  
12 found incompetent?

13 A. Yes. I failed to mention that earlier that he appeared  
14 quite motivated to be released from custody and, perhaps,  
15 released to home or to some residential facility closer to home  
16 that that seemed to be one of his motivations.

17 Q. Now, I am going show you Government Exhibit 31. Now this  
18 is a translation of a February 7 call at 7:07 p.m. It's  
19 between the defendant and an individual named Riatt.

20 THE COURT: What exhibit?

21 MR. WILSON: 31, your Honor.

22 Q. I am going to point you to a portion of the transcript  
23 which begins in the middle of page four.

24 MR. DRATEL: What is the date?

25 MR. WILSON: February 7th.

C8EAABEJH

Dr. Cochrane - Direct

1 Q. That portion of the transcript three statements by  
2 Mr. Bejaoui from the bottom and it begins, what did you do  
3 about the documents, Riatt?

4 A. Yes.

5 Q. If you could read from there over to page five until -- he  
6 says until the first statement by Mr. Bejaoui on page five.  
7 Just let me know when you have had a chance to read that.

8 A. Okay.

9 Q. Do you find that conversation that they're having relevant  
10 to the issue of competence?

11 A. Yeah. Again, indirectly I think it shows well a couple  
12 things. One, he seems to be coherent, organized and can  
13 communicate relevant information to his friend. It also is of  
14 a quasi legal nature. It sounds to me as if it has to do with  
15 this other gentleman's immigration issue. And Mr. Bejaoui  
16 seems to be trying to assist him in pointing out certain  
17 documents. I don't know what those documents are. But  
18 pointing out certain documents to make sure he gets those filed  
19 or completed as part of his application.

20 Q. Why would that be relevant to the question of competence?

21 A. It's relevant, I guess, for the reasons I stated. It shows  
22 he's organized, coherent, can communicate information. Can  
23 assist someone else in a very rational sensible manner which is  
24 relevant to his ability to do such related things with his  
25 attorney and the Court.

C8EAABEJH

Dr. Cochrane - Direct

1 THE COURT: But isn't that also consistent with Dr.  
2 First's theory because here he is talking with somebody he is  
3 comfortable with so he doesn't have the tensions and the fear  
4 and the paranoia that he has had dealing with the lawyers?

5 THE WITNESS: Yes. And I guess what I disputed when  
6 he has tension or even to explore paranoia, those patients  
7 don't have amnesia. They don't forget their cognitive  
8 impairment or lack of memory. There's no clinical explanation  
9 for why -- yes, if someone's nervous you might not be  
10 comfortable talking with someone or not as focused as well as  
11 perhaps you once were, but you are, certainly, not going to  
12 forget or be amnesic again for some of this information.

13 Also, it shows that it is up there in his head. He  
14 has it. He has the knowledge and the requisite abilities that  
15 relate to competence.

16 MR. WILSON: Your Honor, do you have any other  
17 questions?

18 THE COURT: No.

19 BY MR. WILSON:

20 Q. Let me show you what's been marked for identification as  
21 Government Exhibits 42, 43 and 44. I am going to start with  
22 42. What is that document?

23 A. It's titled I-765 Application for Employment Authorization  
24 by the U.S. looks like Department of Homeland Security U.S.  
25 Citizenship and Immigration Services.



C8EAABEJH

Dr. Cochrane - Direct

1 Q. Looking back at Government Exhibit 31, the transcript on  
2 page 5, that first statement by Mr. Bejaoui. He says, why  
3 didn't he submit for you the 765 application, the one for the  
4 work permit?

5 A. Yes.

6 Q. Looking at Government Exhibit 42 did you reach any  
7 conclusions about this statement in the transcript?

8 A. It appears to indicate that he is accurately identifying  
9 that document.

10 Q. And I'll ask you to just look now at 43 and 44 and just  
11 tell us what the titles of those documents are?

12 A. Exhibit 43 is titled, again, from the immigration services  
13 form says form I-485 Application to Register Permanent  
14 Residence or Adjust Status. And Exhibit 44 says I-130 Petition  
15 for Alien Relative.

16 Q. And looking at page 4 of the transcript you were just  
17 looking at Mr. Bejaoui says, did you fill out the 130 or the  
18 485 application.

19 A. Yes.

20 Q. Again, does that indicate to you that he was accurately  
21 identifying relevant immigration documents?

22 A. It does appear so, yes.

23 Q. Does that add any significance to this conversation in your  
24 mind?

25 A. He is accurate. He is not misremembering. He is again

C8EAABEJH

Dr. Cochrane - Direct

1 trying to help his friend and is conveying at least correct  
2 information from the phone call to the -- yeah, to his friend.

3 MR. WILSON: Your Honor, the government would offer  
4 Government Exhibits 42 through 44.

5 MR. DRATEL: No objection.

6 THE COURT: All three are admitted.

7 BY MR. WILSON:

8 Q. You can set them aside. Now, I want to point you --

9 THE COURT: Dr. First, if you'll remember I want to  
10 ask you about this issue all right when you come back on.

11 DR. FIRST: Sure.

12 BY MR. WILSON:

13 Q. Looking at Government Exhibit 7 which is a transcript of a  
14 call from January 29. Look at page five, line 7 to 15.

15 A. Page five where?

16 Q. 7 to 15.

17 A. 7 to 15.

18 Q. Now, this is a call that we've looked at and heard on  
19 several occasions. I don't want to go through again what's  
20 happening. But as to the issue of competency does this have  
21 any significance?

22 A. Much like the other statements, it's significant in the  
23 sense that he recalls having a conversation with his attorney.  
24 He's frustrated. He thinks the attorney should be doing his  
25 job better by getting him returned to Brooklyn or Manhattan and

C8EAABEJH

Dr. Cochrane - Direct

1 he's saying towards the end that he may not be willing to work  
2 or talk further with counsel.

3 Q. And does that have any relevance to his abilities to  
4 understand the proceedings against him or to work with his  
5 defense counsel?

6 A. Yeah. It suggests that despite his frustration he is even  
7 expressing that he may or may not be willing to continue  
8 working with him and knows what his attorney is supposed to be  
9 doing or wants his attorney to do but does know the attorney is  
10 representing him and that's his role, the attorney's role.

11 Q. Does this call indicate to you whether or not the defendant  
12 is scared of his lawyers?

13 A. When I listened to the call?

14 Q. And when you listened to the call and the contact either.

15 A. I didn't sense any fear of his attorney, no.

16 Q. In the other calls that he reviewed across the whole sweep  
17 of the time did you hear or see any indication of the  
18 defendant --

19 A. I don't recall reading in the transcripts of the calls or  
20 any of the calls I listened to any indication of fear towards  
21 his attorney, no.

22 Q. In your experience the defendant's work, in fact, competent  
23 to stand trial ever refuse to work with their attorney?

24 A. Certainly.

25 MR. WILSON: One moment, your Honor.

C8EAABEJH

Dr. Cochrane - Direct

1 BY MR. WILSON:

2 Q. Based on all the evidence and I think you may have said  
3 this before, how confident are you that Mr. Bejaoui is  
4 competent to stand trial at this time?

5 A. I am very confident.

6 MR. WILSON: No further questions.

7 THE COURT: All right. Thank you.

8 Mr. Dratel.

9 MR. DRATEL: Thank you, your Honor.

10 THE COURT: Do you have a sense of how long, sir?

11 MR. DRATEL: An hour, hour and 15, I guess.

12 CROSS-EXAMINATION

13 BY MR. DRATEL:

14 Q. Good morning, doctor.

15 A. Good morning.

16 Q. Yesterday you talked about your credentials, right, and  
17 essentially you've spent your entire professional career with  
18 the Bureau of Prisons?

19 A. Not exactly. The last 12 years I have been with the Bureau  
20 of Prisons. Before that in graduate school during my training  
21 I worked at a variety of different settings.

22 Q. Including mostly jail clinics?

23 A. No, I did work at a court clinic. I've worked at a state  
24 psychiatric hospital, an outpatient crisis center, a community  
25 mental health center and private practice.

C8EAABEJH

DR. COCHRANE - CROSS

1 Q. Those were all parts -- how long were you in private  
2 practice before you came full-time at Bureau of Prisons?

3 A. I did private -- I worked in another person's private  
4 practice during my training.

5 Q. But as a professional?

6 A. The past six or seven years I have been taking private  
7 cases outside of my work with the Bureau of Prisons.

8 Q. But your entire career has been with the Bureau of Prisons  
9 at some point or another?

10 A. After my license, yes.

11 Q. After your license?

12 A. Correct. Once -- let's see, I got my license, yes and then  
13 after that I began working at the medical center, yes.

14 Q. And your 97 and 98 court appearances for testimony all on  
15 behalf of the government, right?

16 A. I've testified for both the defense and the government.

17 Q. You have been called by the defense in this case?

18 A. Well, sometimes I am technically subpoenaed by the  
19 prosecutors because procedurally they do that, although, my  
20 opinion was and I was a witness with for the defense and  
21 prepped with the defense.

22 Q. And you said yesterday and I am quoting that forensic  
23 psychology is primarily evaluation and not treatment, right?

24 A. Primarily, not exclusively, yes.

25 Q. You said that it's not to really help anyone but really

C8EAABEJH

DR. COCHRANE - CROSS

1 answer questions for the Court?

2 A. It's to help the Court but, yes. It's not the usual  
3 doctor/patient relationship.

4 Q. But did you not testify yesterday it is not for helping  
5 people in the ordinary sense?

6 A. Yes, I mean true, yes, we want to want to help people.

7 Q. Did you testify to that yesterday?

8 A. What I am trying to say is --

9 Q. I am asking you a simple question. When did you testified  
10 yesterday on direct that's it is not to help people but rather  
11 to answer questions for the Court?

12 A. That's not exactly what I said, no.

13 Q. Well, the record will reflect --

14 A. Correct, it will.

15 Q. Now, Mr. Bejaoui arrived --

16 THE COURT: Doctor, try not to joust. Just answer the  
17 questions.

18 THE WITNESS: I am sorry, your Honor.

19 Q. Mr. Bejaoui arrived January 7, 2012 in Butner?

20 A. That sounds correct.

21 Q. The first assessment by you was February 3rd, right?

22 A. That was first date I interviewed him, yes.

23 Q. And the last clinical evaluation was March 8?

24 A. The last clinical interview I had with him was March 8,  
25 yes.

C8EAABEJH

DR. COCHRANE - CROSS

1 Q. Last interview you had with him and that's about 35 days,  
2 right, less -- that's about 32 days?

3 A. Yes, I saw him after that but that sounds about right.

4 Q. In fact, your report was dated March 23rd, right?

5 A. Yes. Well, I finished the report on the 16th. It gets  
6 routed internally and all of that and signed ultimately on the  
7 23rd.

8 Q. But the time between the first assessment that you made  
9 your first interview with him and the last clinical session 32  
10 days, right?

11 A. That sounds right.

12 Q. Mandate from the Court was restore to competency, right?

13 A. Correct.

14 Q. And you knew you had a short time window?

15 A. I knew I had a short time.

16 Q. Till March 16 you were asked by the Court --

17 A. Yes. The judge specifically contacted me about that issue  
18 and asked how long it would be before we complete the  
19 assessment phase of the restoration period. So we'll know what  
20 treatment he would or would not need to restore, yes.

21 THE COURT: That telephone contact with the head of  
22 your of the hospital, I think --

23 THE WITNESS: Chief psychiatrist.

24 THE COURT: -- and you would set forth on your report,  
25 right?

C8EAABEJH

DR. COCHRANE - CROSS

1 THE WITNESS: Yes, your Honor.

2 BY MR. DRATEL:

3 Q. Let's talk about the time that you spent interviewing

4 Mr. Bejaoui. Was that February 3rd, right?

5 A. Yes. Yeah. That date I recall as the first date.

6 Q. Do you have your notes by any chance?

7 A. I do. Which notes are you referring to?

8 Q. The clinical notes?

9 A. I don't have the medical records with me, no.

10 MR. DRATEL: May I approach, your Honor?

11 THE COURT: Yes.

12 Q. Those are essentially the medical records, right? May not  
13 be all the medical records but you've previewed all the ones  
14 that you offered, right?

15 A. Yes. In the medical records that I believe we all have  
16 copies of, my notes would have been one part, this section  
17 appears to be just my notes.

18 Q. Well --

19 A. Not the entire.

20 MR. WILSON: Can we make sure we identify which?

21 MR. DRATEL: Sorry. 3501 -- no. It's further on  
22 3501-H.

23 Q. So that has the February 3rd, right?

24 A. Yes.

25 Q. And then there's a notation for February 6th. Actually,



C8EAABEJH

DR. COCHRANE - CROSS

1 there's another one February 3rd but that's also for collateral  
2 documents. It's not about interviewing Mr. Bejaoui. That's  
3 not about materials you were looking for?

4 A. Yes.

5 Q. February 6, that's from staff, right?

6 A. February the 6th.

7 Q. Says staff about notarization?

8 A. I don't see that in my --

9 Q. Look at 7112. I am sorry. Maybe that's 216, not 26?

10 A. 216 is the note that I wrote.

11 Q. Yes. Says a staff note about notarization, right?

12 A. Staff noted patient had documents noted -- notarized  
13 yesterday, yes.

14 Q. But no other change in behavior, correct?

15 A. Yeah.

16 Q. Now is that based on your observation or staff observation?

17 A. That was a staff observation. I was not present when that  
18 document as notarized.

19 Q. Still the only time you interview him was February 3rd?

20 A. No, I was making a note of that but I also interviewed him.  
21 In fact, I quote him here during that 216.

22 Q. So that's from you?

23 A. Yeah. Yeah.

24 Q. OK. Now the next one is the 23rd, right?

25 A. Correct.

C8EAABEJH

DR. COCHRANE - CROSS

1 Q. And that's another staff note, correct?

2 A. That's my note.

3 Q. But I mean a staff report to you?

4 A. Sorry. Go ahead.

5 Q. Says CO Lipscomb, C-O, L-I-P-S-C-O-M-B this is 7113, the  
6 page number, the bottom right. The Bates stamp noted patient  
7 went to dental, right?

8 A. Yes.

9 Q. Okay. And there's no -- is this your interview of him or  
10 is this just CO Lipscomb's observations?

11 A. These are the observations of the officer, the staff and  
12 also includes some other things like the release of  
13 information.

14 Q. Right. But not an interview with him?

15 A. Correct.

16 Q. 31, 7114 and then it says, if you look it says, patient  
17 noted by staff to exhibit tremor in right hand intermittently  
18 right at the top of it 7114?

19 A. Correct.

20 Q. For March 1st?

21 A. Yeah, that's my interview with him as well as that  
22 additional data.

23 Q. Note by staff but it also includes an additional interview  
24 by you?

25 A. Correct. It continues on the next page.

C8EAABEJH

DR. COCHRANE - CROSS

1 Q. Okay. And then March 8?

2 A. Correct.

3 Q. Is the railroad conversation, right?

4 A. Yes.

5 Q. That's essentially the last time you speak to him?

6 A. Yes.

7 Q. So that's four?

8 A. Four what.

9 Q. Four sessions?

10 A. This doesn't include the treatment team meeting where I and  
11 others were present for that.

12 Q. You don't take notes?

13 A. I don't take notes.

14 Q. At those sessions?

15 A. The document is produced. The treatment plan and there is  
16 a note referencing the treatment plan that we reviewed with the  
17 question.

18 Q. That's not my question. Do you take notes? Please answer  
19 my. Questions?

20 MR. WILSON: Objection.

21 THE COURT: Sustained. Do you take notes?

22 THE WITNESS: Of course.

23 THE COURT: All right.

24 Q. You don't have those notes?

25 A. What notes are you referring to?

C8EAABEJH

DR. COCHRANE - CROSS

1 Q. You said about other sessions and I asked if you take notes  
2 at those other sessions. The Court asked if you take notes and  
3 you said yes.

4 A. I believe there is a note about the treatment team meeting,  
5 yes.

6 Q. A treatment team meeting?

7 A. Where I was present and we interviewed.

8 Q. Okay. One other meeting, right?

9 A. Right.

10 Q. Okay. So the total of --

11 MR. WILSON: Objection, your Honor. There is no  
12 answer to that question and then he cut him off.

13 MR. DRATEL: Sorry. I thought he --

14 THE COURT: I think we have an answer. Next question.

15 Q. You spent time preparing for your testimony here today,  
16 right?

17 A. Of course.

18 Q. By the way, you also spent a fair amount of time listening  
19 to the telephone conversations either initially before your  
20 report and certainly since your report, right?

21 A. Before the report I listened to random samples of calls,  
22 yes. Subsequent to my report I reviewed the transcripts of all  
23 the calls and listened to some calls presented to me by the  
24 prosecution.

25 Q. If you look --

C8EAABEJH

DR. COCHRANE - CROSS

1 THE COURT: In connection with your preparation for  
2 appearing today?

3 THE WITNESS: Yes, it is, your Honor.

4 BY MR. DRATEL:

5 Q. And if you look at 3501-A, if you go a few pages in.

6 A. Exhibit 35.

7 Q. 3501-A in the front it's the first document probably.

8 A. Thank you. I don't see an "A" 3501-I?

9 THE COURT: In your book, sir, first document.

10 THE WITNESS: Oh, thank you. I am sorry. I am with  
11 you now.

12 Q. Okay. There are full four pages of your notes of the  
13 telephone calls, right, of your listening to transcripts?

14 A. The first one is blocked out for some reason.

15 Q. No. No. Just go about a few pages in. If you go -- it  
16 starts with the heading on the top call monitored. Do you see  
17 that?

18 A. Yes.

19 Q. And there are four pages of notes of the calls, right?

20 A. Looks like it goes to the fifth page.

21 Q. Okay. And then if you look at 3501-B you have notes on Dr.  
22 First's report, right? You have two pages of the notes on  
23 that, right?

24 A. 3501-B.

25 Q. About three pages in?

C8EAABEJH

DR. COCHRANE - CROSS

1 A. Oh, thank you. I do, yes.

2 MR. DRATEL: Your Honor, I'd move in 3501-H, the  
3 clinical records that we talked about earlier.

4 MR. WILSON: No objection.

5 THE COURT: 3501-H admitted.

6 MR. DRATEL: Thank you, your Honor.

7 (Defendant's Exhibit 3501-H received in evidence)

8 BY MR. DRATEL:

9 Q. You assisted the prosecutors in preparing for the  
10 cross-examination of Dr. First?

11 A. Yes, requested that I review his report and provide --

12 Q. Say "yes" or "no", did you assist him?

13 A. Yes. I don't want to be misleading by the word "assist".

14 Q. Did they talk to you about what types of questions might be  
15 useful to ask on cross-examination?

16 A. Yes, I believe we did.

17 Q. Do you think that's assistance?

18 A. That's one aspect of assistance, yes.

19 Q. Did you also concentrate a little bit on forensics in that  
20 issue, that forensic qualifications?

21 A. I'm not sure I follow.

22 Q. Talking about how to cross-examine Dr. First, did you  
23 address or discuss with the prosecution the question about  
24 forensic qualifications?

25 A. I believe I noted when they showed me his curriculum vitae

C8EAABEJH

DR. COCHRANE - CROSS

1 that I didn't identify that he had much background in  
2 forensics, yes.

3 Q. So that's a yes? Is that a convoluted way of saying yes?

4 A. You thought it was a clear way.

5 MR. WILSON: Objection.

6 THE COURT: Sustained. Next question. Move on  
7 gentlemen.

8 Q. Now, you say you looked at collateral documents, right, to  
9 the try to make determinations to assist you in your evaluation  
10 and your diagnosis and your conclusion, correct?

11 A. Correct.

12 Q. So one would be the MCC records, right?

13 A. Yes, I believe I had those or some of those.

14 Q. And you know that Mr. Bejaoui was diagnosed with a major  
15 depressive disorder by MCC as early as January 2011, right?

16 A. Yes, I believe so.

17 Q. And he was at MCC from June 2010 until February 3, 2011,  
18 right?

19 A. I'd have to take your word for it or look it up. I don't  
20 recall.

21 Q. Well, it's in the variety of reports that are admitted in  
22 evidence, so I won't have to establish that further. And so  
23 that's about nine months at MCC, right?

24 A. I guess so.

25 Q. Eight months, I guess. Eight months at MCC. He was at MDC

C8EAABEJH

DR. COCHRANE - CROSS

1 starting in February 24, 2011, right?

2 A. MDC.

3 Q. In Brooklyn?

4 A. Yeah. I believe he is there. Again, I don't recall the  
5 timeframes.

6 Q. They'd also diagnosed him with major depressive disorder?

7 A. I believe so.

8 Q. In May of 20 -- sorry in February of 2011. And he is there  
9 February 4, 2011 till June 23, 2011, right?

10 A. I believe so.

11 Q. That's February, March, April, May, June. That's the five  
12 months, right?

13 A. That would be five months, right.

14 Q. And you had him for 30, 35 days before the report, right?

15 A. Before the report we had him a little longer than that. My  
16 interviews expanded over 35 days as you pointed out.

17 Q. MDC also diagnosed him in March of 2011 with panic disorder  
18 with agoraphobia, right?

19 A. I don't believe Dr. Channel ultimately diagnosed that.

20 Q. I didn't say Dr. Channel. I said MDC.

21 A. Who do you mean, sir?

22 Q. MDC Brooklyn.

23 A. Which doctor diagnosed him with that.

24 Q. I don't know which doctor but it's in the report. Do you  
25 want to look at the report?



C8EAABEJH

DR. COCHRANE - CROSS

1 A. That would help me identify and help me recall that. I  
2 appreciate it.

3 Q. It's in Dr. Krueger's report. Have you seen it?

4 A. I have.

5 Q. By the way, Dr. Krueger is a forensic psychiatrist?

6 A. I believe so.

7 Q. Well, his CV is in the record. I don't think we have to  
8 move it in evidence here.

9 MR. DRATEL: May I approach, your Honor?

10 (Pause)

11 MR. DRATEL: I'll move on right now.

12 THE COURT: All right.

13 BY MR. DRATEL:

14 Q. Devens report page six, do you have the Devens report  
15 there?

16 A. Give me a moment. I do somewhere.

17 THE COURT: Is that Defense C?

18 MR. DRATEL: Yes, your Honor.

19 Q. Okay. If you look at the first full paragraph begins on  
20 April 6, 2011, page six.

21 A. Yes.

22 Q. And do you see in the middle of the page it says he is seen  
23 for follow-up by Dr. McLean?

24 A. Yes.

25 Q. He was prescribed the -- and then two sentences later he

C8EAABEJH

DR. COCHRANE - CROSS

1 was described the antidepressant remron and given the diagnosis  
2 panic disorder?

3 A. Correct.

4 Q. And the Devens report, obviously, is another collateral  
5 document that you reviewed, right?

6 A. The Devens report, yes.

7 Q. Dr. Channel's conclusions we know, right?

8 A. Correct.

9 Q. And he's a forensic psychologist as well?

10 A. He is.

11 Q. And he was at Devens?

12 THE COURT: Sir, just so I have it correct, it's not  
13 the MDC that did the panic disorder?

14 MR. DRATEL: No, it is.

15 THE COURT: I thought it was Devens.

16 MR. DRATEL: No. It was in the Devens report but the  
17 Devens report is recounting his Bureau of Prisons history.

18 THE COURT: All right.

19 MR. DRATEL: So it was a doctor at MDC in April of  
20 2011.

21 THE COURT: All right. Thank you.

22 MR. DRATEL: It's in the medical records as well, your  
23 Honor.

24 Q. Dr. Channel is a forensic psychologist, right?

25 A. Yes, I believe so.

C8EAABEJH

DR. COCHRANE - CROSS

1 Q. And he was not -- Mr. Bejaoui was at Devens from June 24,  
2 2011 until January 26, 2012, right?

3 A. That sounds right.

4 Q. So that's seven months, right?

5 A. It appears to be.

6 Q. That was the independent diagnosis we talked about, Dr.  
7 Krueger and Dr. First, all reaching the same conclusion, major  
8 depressive disorder?

9 A. I believe they did, yes.

10 Q. Now, you had a conversation where you describe the  
11 conversation with Ms. Kovner when you were preparing your  
12 report, correct?

13 A. Yes.

14 Q. And that's actually in your report. There's a section,  
15 page three, right?

16 A. I think so.

17 Q. And -- you want to look?

18 A. Sure. Yes.

19 THE COURT: I'll take the Devens report back.

20 THE WITNESS: Yes.

21 Q. Now, in that paragraph it says if you look towards the  
22 bottom, State of New York eventually dropped that case, right?

23 A. Yes.

24 Q. Do you see where this sentence is? It says because he  
25 would have been sentenced to time served any way and there were

C8EAABEJH

DR. COCHRANE - CROSS

1 concerns about his mental status. Do you see that?

2 A. Yes, I do.

3 Q. What was the basis for her information, do you know?

4 A. I don't.

5 Q. Did you ask her?

6 A. I did not.

7 Q. Did you ask her for the documents?

8 A. Document as to.

9 Q. His mental status in his state case?

10 A. No, I didn't.

11 Q. Did you pursue that in any way? Did you ask for  
12 information from Rikers Island or New York State to see if he  
13 had an examination or any other mental evaluation?

14 A. I did not.

15 Q. You didn't think it was important?

16 A. I don't recall if I didn't believe it was important or the  
17 data wasn't available.

18 Q. Did you check, is there anything in your notes and I'd like  
19 to see it where you contacted Rikers Island or anyone from the  
20 Bureau of Prisons contacted Rikers Island or New York State to  
21 get information about his case?

22 MR. WILSON: Objection, your Honor.

23 THE COURT: The question is simply did you contact --

24 THE WITNESS: No, I did not.

25 Q. Did you ask Ms. Kovner if she had documents?

C8EAABEJH

DR. COCHRANE - CROSS

1 A. I don't believe so. I did request, as we routinely do, of  
2 both defense and prosecution should have received a letter at  
3 the outset of his admission which I am sure is in our records  
4 requesting all medical records and helpful information. So I  
5 assume that if there was something additional I did not obtain,  
6 your office or the prosecution would have forwarded it.

7 Q. You assumed that. That's why you went to the Lutheran  
8 Hospital. You specifically asked for the Lutheran Hospital  
9 records?

10 A. Correct. But I don't know that you are aware of the  
11 Lutheran Hospital records.

12 Q. Well, maybe I am not aware of the New York State records at  
13 either. Do you know whether I was his attorney in New York  
14 state?

15 A. I don't. Again, I made the assumption you were aware of  
16 the situation at Rikers, that he was there.

17 Q. But did you know whether we had any records from Rikers?

18 A. I don't know.

19 Q. But when you are talking about someone's mental health  
20 history and you have something from the prosecutor that says a  
21 state case was disposed of in part because of concerns about  
22 his mental status you took no steps, whatsoever, to inquire or  
23 investigate what that meant?

24 A. Correct.

25 MR. DRATEL: Your Honor, may -- before I forget, if

C8EAABEJH

DR. COCHRANE - CROSS

1 the government has any documents in that regard or any source  
2 of information.

3 THE COURT: Wait. You are talking about Rikers  
4 medical records?

5 MR. DRATEL: No. No. I am talking about the basis of  
6 that communication from Ms. Kovner to Dr. Cochrane because the  
7 first I ever heard of it was in this report.

8 THE COURT: There's no question. Next?

9 THE WITNESS: Got you.

10 BY MR. DRATEL:

11 Q. In fact, one of the bases for your conclusions about the  
12 malingerer is that these symptoms seemed to just appear all of  
13 a sudden a year before, right?

14 A. I am sorry. Could you repeat that?

15 Q. Sure. One of the bases for your finding of malingerer is  
16 that Mr. Bejaoui's symptoms appeared suddenly a year before he  
17 saw you and that that was unusual that that wouldn't be the  
18 kind of thing that would be authentic?

19 A. No. It wouldn't be unusual to have symptoms or problems to  
20 have such severity with no history given that his wife also  
21 indicated seeing him at Rikers and noted to troubles or  
22 difficulties. Then it was only after that then that the  
23 troubles seemed to emerge is my understanding.

24 Q. But you had evidence there that his state case from the  
25 prosecutor, you had evidence that you had information that his

C8EAABEJH

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1 state case was disposed of because of his mental status. That  
2 did not tell you that potentially there was antecedent problems  
3 that could be just exacerbated by what happened?

4 A. I can see it and believed that he had prior treatment with  
5 antidepressant and antianxiety medication, as I noted in the  
6 report.

7 Q. Is that something that's going to dispose of a state case  
8 because of someone's mental status in your opinion just being  
9 on anti depressant is going to dispose of a case?

10 A. I honestly don't know.

11 Q. Have you ever found someone incompetent in a case disposed  
12 of because of someone's mental status merely because they're on  
13 antidepressants? You as a doctor have you ever done that?

14 MR. WILSON: Objection, your Honor. I don't think I  
15 understand the question as to him having a case disposed of.

16 MR. DRATEL: Okay.

17 Q. Has anyone ever been found incompetent to stand trial on  
18 your opinion? In other words, have you ever rendered an  
19 opinion that someone is incompetent to stand trial because  
20 they're prescribed antidepressant? Just that.

21 A. Well, it's hard to answer. I don't know how to answer that  
22 question.

23 Q. Just the fact that someone is on antidepressants?

24 A. Well, if they're so depressed they might be incompetent,  
25 sure.

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1 Q. Well, isn't that what this says?

2 A. But not necessarily. I mean in some cases people are on  
3 antidepressants and they're actually doing quite well.

4 Q. So the antidepressants alone is not enough to make someone  
5 incompetent?

6 A. No, it would not be enough. I mean in and of itself, if  
7 that's all the information you have, you wouldn't know  
8 basically.

9 Q. Okay. If you look at 3501-H that's in evidence 7110.

10 A. 3501-H.

11 Q. Yes.

12 A. Yes.

13 Q. 7110.

14 A. I am not sure what you mean by --

15 Q. Look at the bottom right that Bates stamp.

16 A. 7108, 7109.

17 Q. 7110.

18 A. 7110. Thank you.

19 Q. If you look about two thirds down the page there's H/P  
20 perhaps?

21 A. Yes, it is.

22 Q. Patient presentation suggests exaggerated or somatoform  
23 symptoms, right?

24 A. Yes.

25 Q. Is that what that says?



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1 A. Correct.

2 Q. Seems strange that significant paranoia would have onset  
3 one year ago while in custody, right?

4 A. Correct. That was my thinking at the time.

5 Q. But when you heard from Ms. Kovner that his state case was  
6 disposed in part because of concerns about his mental status,  
7 did that not tell you something different about onset or,  
8 potentially, tell you something different about the onset of  
9 symptoms and when they occurred?

10 A. Well, maybe. Again, all I recall is that he had a history  
11 of anxiety and depression. Again, I don't know anything about  
12 the state case or whether there was or wasn't any mental health  
13 concern, nor do I know that paranoia was involved in that  
14 situation.

15 Q. Yesterday in your testimony you said that one of the reason  
16 first your findings and your conclusions was that you said  
17 there were four diagnoses to cover the spectrum of  
18 Mr. Bejaoui's complaints, right?

19 A. I recall saying that if he were to take it face value all  
20 of the complaints it, certainly, would suggest a number of  
21 diagnosis and I think I listed about four.

22 Q. Right. And one of them was dementia, right?

23 A. Yes.

24 Q. And in fact, none of the other doctors diagnosed him with  
25 that?

C8EAABEJH

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1 A. Right.

2 Q. They made their findings major depressive disorder without  
3 dementia?

4 A. Correct.

5 Q. And it doesn't require dementia, correct?

6 A. No. They're separate disorders.

7 Q. And in fact, mood, psychosis, cognition can all be elements  
8 of major depressive disorder and not dementia?

9 A. Not to the severity that was reported here, no.

10 Q. In your opinion?

11 A. In my opinion, no.

12 Q. Correct. Dr. Channel disagreed?

13 A. No, I don't think he believed he had severe cognitive that  
14 I recall. He reported a depression of psychosis, yes.

15 Q. Could somatoform disorder could account for all of that as  
16 well?

17 A. For what?

18 Q. Mood, cognition?

19 A. No. Let me --

20 Q. You've never, never heard of --

21 A. Let me rephrase that. Are you asking because somatoform  
22 disorder or a type of somatoform disorder account for all of  
23 these reported symptoms?

24 Q. Not all of them but the ones I am talking about mood,  
25 psychosis, cognition?

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1 A. Yes. Someone could with somatoform disorder report pseudo  
2 neurological symptoms, yes, psychiatric symptoms.

3 Q. Pseudo hallucinations?

4 A. Yes. It would be possible, yes.

5 Q. You talked yesterday about markers for depression and you  
6 need five of the nine, right, for a major depression?

7 A. Yes.

8 Q. Depressed mood is one, right?

9 A. That's one of the symptoms, right.

10 Q. Do you think he has a depressed mood?

11 A. Yes.

12 Q. Diminished interest or pleasure?

13 A. Is there a question?

14 Q. Do you think he satisfies that problem?

15 A. I don't think so. That one's difficult to tell. Was some  
16 evidence that he again was still very connected with his family  
17 with doing, helping his friend and engaging in sort of  
18 transactions in his case and wanting his attorney to do things.  
19 So it was somewhat difficult to assess but there was clear  
20 indication that he had an interest in certainly some things.

21 Q. But diminished interest or pleasure is the question, not  
22 that you have some left, right?

23 A. Sure.

24 Q. Now to a core --

25 A. I didn't see any evidence of that.

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1 Q. Did you see any evidence of interest in anything while he  
2 was at Butner?

3 A. Such as?

4 Q. Any activity that he did?

5 A. Writing letters and talking on the phone like a lot of  
6 inmates do.

7 Q. To his family and his close friends, anything else he  
8 did --

9 MR. WILSON: Objection, your Honor. That is not a  
10 question. That's testimony.

11 Q. Is there anything else he did at Butner besides writing  
12 letters to his family?

13 THE COURT: You may answer.

14 THE WITNESS: He did a number of things. He ate. He  
15 slept. He had a number of appointments, like many other of the  
16 other inmates do.

17 Q. Diminished concentration. Did he exhibit -- let's take it  
18 at face value.

19 A. If you believed his account then I would probably argue it  
20 was diminished to some degree.

21 Q. Psychomotor retardation. Tell us what that means.

22 A. Yes. It's excessive slowing down of your motor movements  
23 because you are so depressed because you have little physical  
24 activity.

25 Q. Did he present that as well?

C8EAABEJH

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1 A. At intervals but not consistently.

2 Q. Feelings of worthlessness.

3 A. He never reported to that to me.

4 Q. Did you listen to his telephone calls?

5 A. Yes.

6 Q. You don't find that there?

7 A. Don't find what?

8 Q. Feelings of worthlessness.

9 A. He occasionally made sympathetic pleas that he was  
10 miserable and people were just going to kill him and things  
11 like that, so it depends on your interpretation of the data.  
12 But I didn't see consistent reports of feeling worthless or  
13 suicidal.

14 Q. He did have some suicidal ideation, right?

15 A. He reported on at least three occasions to us he did not  
16 have suicidal ideation.

17 Q. That was not my question. He did have --

18 A. I don't know that he did, no.

19 Q. You see that in the other reports?

20 A. I see he reported it to one or more doctors before, yes.

21 Q. So it's another prong at face value?

22 A. At face value.

23 Q. You said sleep problems too. He did complain of sleep  
24 problems, right?

25 A. He complained of it but there was no evidence from

C8EAABEJH

DR. COCHRANE - CROSS

1 observation of the staff who worked 24 hours a day there.

2 Q. Also noted is weight loss or gain?

3 A. Yes. Another symptom, another criteria.

4 Q. You ever see photos of him before he got to Butner?

5 A. Photos?

6 Q. Of Mr. Bejaoui before he got to Butner.

7 A. I don't recall if I did or not to be honest.

8 MR. DRATEL: If I may, your Honor, this is Defendant's  
9 G which is defendant's rap sheet. May I approach and I'd like  
10 to move it in.

11 MR. WILSON: No objection.

12 THE COURT: "G" admitted.

13 (Defendant's Exhibit G received in evidence)

14 Q. You see the photo on the first page, right?

15 A. Yes.

16 Q. That's Mr. Bejaoui and that's when he is taken into federal  
17 custody. In June of 2010. Does he appear the same to you now  
18 as he did?

19 A. Could I see the photo?

20 Q. Yes.

21 A. Actually, it doesn't even look quite like him cause his  
22 hair is so much puffier and the picture quality is very poor.  
23 I'm sorry. Your question was?

24 Q. Does he look the same? Does that look like the same person  
25 to you in effect?

C8EAABEJH

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1 A. It's hard to tell given again how bad the quality of the  
2 photo is and he is now wearing glasses and his air cut is  
3 different, it's hard for me to answer that.

4 Q. Let's look then at page 3 which says page one of eight but  
5 it's 6849 at the bottom right, the Bates stamp number. Let's  
6 look at this photograph when he was taken into state custody in  
7 July 3rd of 2007. Does that look like the same person to you?

8 THE COURT: Same person as is here in the court?

9 THE WITNESS: The same person as in court? There's  
10 resemblance. Again, it is hard to tell with the photo being  
11 poor and haircut being different but there's a resemblance.

12 Q. That's your answer. When I asked you, I am not asking  
13 whether it's identify as him. We know that is Mr. Bejaoui.  
14 The question is, is that the same person to you in the total  
15 affect. In other words, what we are looking at here versus  
16 this person who is making eye contact with the camera?

17 A. Well, that's a snapshot in time. I don't know how to  
18 answer that.

19 Q. Okay. All right.

20 A. I look different in ten different photographs you take of  
21 me. It's hard to --

22 Q. They also said that 38 would be too old to start having  
23 mood disorders. Isn't it a fact that mood disorders get worse  
24 with age?

25 A. I am sorry.

C8EAABEJH

DR. COCHRANE - CROSS

1 THE COURT: Do mood disorders get worse with age?

2 THE WITNESS: They can, yes.

3 Q. Now, there's something called factitious disorder?

4 A. Correct.

5 Q. It's actually in your differential report but not in your  
6 report, right?

7 A. Yeah. I don't believe I put it in the report, correct.

8 But of course I considered that and the other somatoform  
9 disorder.

10 Q. It involves intentionally exaggerating or feigning symptoms  
11 basically for attention, care, getting on the sick role so to  
12 speak, is that a fair assessment?

13 A. Yes.

14 Q. And it's not for secondary gain as we described it here in  
15 the sense of what we're talking about, right?

16 A. Correct.

17 Q. And would you agree that Mr. Bejaoui was clearly interested  
18 in being taken care of?

19 A. I think to some degree, yes, and to obtain sympathy and  
20 support from others, not just doctors and being a patient role  
21 but from family and friends too.

22 Q. He is demanding in that regard in some respects?

23 A. Yes.

24 Q. That could account for the wheelchair?

25 A. What.



C8EAABEJH

DR. COCHRANE - CROSS

1 Q. A factitious?

2 A. That's one hypothesis, yes.

3 Q. Now, on direct -- are you familiar with the DSM source  
4 book?

5 A. Yes, I am familiar with. I haven't looked at it recently  
6 but, yes.

7 Q. You had -- on direct you said that the psychotic features  
8 associated -- would only be associated with severe depression,  
9 right? That's what I think you testified to.

10 A. That's how it's listed in the DSM.

11 Q. But in the source book doesn't it say that it can be  
12 associated with less severe depression?

13 A. Perhaps in the sourcebook but the guide that we use for  
14 diagnosis is the DSM4 two. That's what I was referencing.

15 MR. DRATEL: May we mark this as "I". Could I  
16 approach?

17 MS. KOVNER: Can we see?

18 Q. Can you explain what the DSM sourcebook is?

19 A. I think it's just a helpful guide. It's not a definitive  
20 text for diagnosing individuals but it can be a helpful guide  
21 for clinicians. But, again, I haven't looked at it for some  
22 time. Is this one page of the document?

23 Q. Yes. Page 1026 and I should just -- that sentence that  
24 says "that is"?

25 A. You want me to read it?

C8EAABEJH

DR. COCHRANE - CROSS

1 Q. Yes.

2 A. That is some less severe depressions do present with  
3 psychotic symptoms on the other hand. You want me to go on?

4 Q. Yes.

5 A. On the other hand, potential disruption involved in  
6 removing psychosis from the severity coding system as thought  
7 to far outweigh -- change sounds like some discussion about  
8 whether to keep it in or whether or not.

9 Q. But it does say that some of the severe depressions do  
10 present with?

11 A. Some researchers believe that.

12 Q. Some less severe depressions. Now, on the Devens report if  
13 you could look at that. That's C, Defendant's C I think that  
14 is the one I don't --

15 THE COURT: Here you go.

16 THE WITNESS: Thank you again.

17 Q. Look at the bottom of page one. Page one, that paragraph  
18 that begins at the bottom. During his time at the facility the  
19 defendant was routinely observed by his housing unit by both  
20 clinical and correctional staff and these observations were  
21 incorporated into the findings of this report, correct?

22 A. Correct.

23 Q. So he was there before the report for July, August,  
24 September, some of June and some of October of 2011, right?

25 A. I believe, yes.

C8EAABEJH

DR. COCHRANE - CROSS

1 Q. That's almost four months?

2 A. I believe, yes.

3 Q. He was there for another four months before his transfer to  
4 Butner, right, till the end of January?

5 A. I don't know whether he was held at that point. I guess  
6 so. I'd have to look that up.

7 Q. Okay. But you didn't get anything subsequent from Devens  
8 to that report saying oh, things have changed. We found he was  
9 malingering or we found inconsistencies that were in the report  
10 or anything like that that changed its conclusions?

11 A. No. Dr. Channel had a rule-out of malingering that still  
12 needed to be uncovered.

13 Q. My question was at a time between October did anybody call  
14 you or provide information to Butner saying since we did that  
15 report in October we've discovered new things?

16 A. No, no one did.

17 Q. And on page two, if you look at background information, the  
18 last sentence on that first paragraph talking about Mr. Bejaoui  
19 he was also a very poor historian and provided a good deal of  
20 contradictory information which is noted below.

21 A. Yes.

22 Q. So that was incorporated into Dr. Channel's findings,  
23 right?

24 A. Yes, it appears so.

25 Q. The initial observations page seven.

C8EAABEJH

DR. COCHRANE - CROSS

1 A. Of that same report?

2 Q. Yes. Evaluation findings.

3 A. Sorry. Yes. Okay.

4 Q. Okay. Page 7 if you look at the paragraph, the second  
5 paragraph from the bottom that begins Mr. Bejaoui was initially  
6 housed, right?

7 A. Yes.

8 Q. Do you see there's a sentence in the middle that says he  
9 was also noted to exhibit loose associations and "marked  
10 paranoid ideation", correct?

11 A. Yes.

12 Q. And look at page eight, the paragraph that begins on August  
13 5th, right?

14 A. Yes.

15 Q. And at the last sentence says given his agitated and  
16 paranoid presentation Mr. Bejaoui was transferred to the locked  
17 mental health unit, right?

18 A. That's right.

19 Q. And all that is incorporated in this report in Dr.  
20 Channel's findings and conclusions, right?

21 A. That's right.

22 Q. If you look at the bottom of that page in the last sentence  
23 it talks about, essentially, orientation examination given by a  
24 Dr. Channel, correct?

25 A. Yes.

C8EAABEJH

DR. COCHRANE - CROSS

1 Q. The last sentence reads Dr. Kennedy noted Mr. Bejaoui  
2 appeared to be trying to answer the questions and became very  
3 frustrated when he could not get the answer, correct?

4 A. Yes.

5 Q. Now, if we look at 11, page 11 if you look at the paragraph  
6 in the middle of the page, based on history and presentation of  
7 Mr. Bejaoui does meet diagnostic criteria and major depressive  
8 disorder. He is experiencing severe depressive episodes  
9 characterized by psychotic features including delusions and  
10 auditory hallucinations and Dr. Channel reached that conclusion  
11 despite the fact that he knew there were inconsistencies in  
12 Mr. Bejaoui's presentation, right?

13 A. It appears so, yes.

14 Q. And despite the fact that Mr. Bejaoui was a poor historian,  
15 right?

16 A. It appears that's his conclusion, yes.

17 Q. And that's after three to four months of observation?

18 A. Three or four months he was at that institution.

19 Q. Yes. Well, do you know why he was sent there?

20 A. Do I know why he was sent there?

21 Q. Yes.

22 A. I believe because he was initially evaluated by Dr. Krueger  
23 and was found to be incompetent. I could have the sequence  
24 wrong. I apologize. He was sent there initially.

25 Q. It's not like he was sitting around for two months not

C8EAABEJH

DR. COCHRANE - CROSS

1 being observed and evaluated, right?

2 A. Oh, I don't believe so.

3 Q. Now, Dr. Channel also talks about the report, the Devens  
4 report from Dr. Channel, two other possibilities malingering  
5 and conversion disorder?

6 A. Yes.

7 Q. The conversion disorder, the symptoms or deficits are not  
8 intentional as they are with malingering?

9 A. Yes.

10 Q. You can present the same way.

11 A. Say that again.

12 Q. You could present the same things in conversion disorder  
13 and if it's not intentional, it's not malingering. In other  
14 words, conversion disorder can present the same types of things  
15 that would lead to finding of malingering but could --

16 A. It could be but it doesn't necessarily have to, no.

17 Q. Doesn't have to be but it could be. You could have two  
18 people presenting the exact same thing, right? One could be  
19 conversion disorder, one could be malingering?

20 A. You could, theoretically, yes.

21 Q. Now, yesterday you described, I think you used the term but  
22 we don't have the transcript, Mr. Bejaoui had energy?

23 A. At times he was quite energetic.

24 Q. At times, okay. That was when he was upset, right?

25 A. That was the most notable time, yes, when he was upset.

C8EAABEJH

DR. COCHRANE - CROSS

1 Q. The rest of the time he is in a wheelchair?

2 A. Well, he's always in a wheelchair.

3 Q. You said he was cooperative yesterday too, I think at one  
4 point?

5 A. At times he --

6 Q. You said that yesterday he was cooperative?

7 A. In what context?

8 Q. When you were saying why you thought that some of the  
9 inconsistencies and also with respect to -- that led to the  
10 conclusion that he was energetic and cooperative.

11 MR. WILSON: Objection.

12 THE WITNESS: I don't know if I said that.

13 Q. So he wasn't cooperative. You testified today you couldn't  
14 even administer a psychological test on him?

15 A. He was cooperative in some sense and uncooperative in  
16 others.

17 Q. Testing, not cooperative?

18 A. Testing, he was not cooperative.

19 Q. Lumbar spine MRI, not cooperative?

20 A. Correct, not cooperative.

21 Q. Not cooperative when asked about legal proceedings?

22 A. Correct.

23 Q. Refused to eat at one point?

24 A. Yes. That's what he said and he missed at least one meal.

25 Q. Refused to take medication at one point?

C8EAABEJH

DR. COCHRANE - CROSS

1 A. For a few days, yes.

2 Q. That's all a period of a month basically?

3 A. I am not -- was all over a period.

4 Q. All while he was at Butner, all of these instances are --

5 A. Over the course of about two months, yes.

6 Q. Was not cooperative all the time with his physical  
7 therapist too?

8 A. Sometimes he was -- later.

9 Q. He was resistant at times?

10 A. Correct.

11 Q. And following that railroad conversation, in fact, he  
12 refused to speak to you at all?

13 A. After that, yes.

14 Q. And other people too would go in, right? It's all in that  
15 3001-H right? You want to go through it, basically, people  
16 come to him. Him he would sit there or lie there on the bed,  
17 look the other way, look out of the window, refused to respond?

18 A. At that point, yeah, he was completely uncooperative.

19 Q. That's basically from March 8 on, right?

20 A. Yes. I believe that is the date.

21 Q. Now, preparing either your report or your testimony I don't  
22 know, perhaps, you could tell us maybe there is a date. Oh,  
23 yes for preparing of your testimony in May of 2012 you made a  
24 list of inconsistencies?

25 A. Sorry. In preparation of my testimony in May?



C8EAABEJH

DR. COCHRANE - CROSS

1 Q. No. No. I am saying in May of -- withdrawn.

2 In May of 2012 you made a list of inconsistencies,  
3 right?

4 A. Yeah. Those were some initial thoughts I had.

5 Q. Look at 3501-B.

6 A. Okay. Yes.

7 Q. The first one says head injury CT wife report?

8 A. Yes.

9 Q. And it's basically about the Lutheran Hospital claim that  
10 you couldn't corroborate?

11 A. That referencing that, yeah, the CT of his head was  
12 negative and his wife reported no knowledge of head injury.

13 Q. And then you found out subsequently that in fact he had  
14 been at Lutheran Hospital but they didn't have records,  
15 correct.

16 A. I was told that yesterday during Dr. First's testimony. I  
17 don't have first and knowledge of that.

18 Q. You weren't told about that before? You weren't told about  
19 that before yesterday? No one told you that?

20 A. I was not --

21 Q. The prosecutors never told you that?

22 A. No, they did not.

23 MR. DRATEL: Your Honor, I would like to move in as  
24 Defendant's E the subpoena response that came to your Honor  
25 from Lutheran Hospital.

C8EAABEJH

DR. COCHRANE - CROSS

1 MS. KOVNER: By the way, I've never seen this document  
2 that Mr --

3 MR. DRATEL: I'm sorry. I thought everybody had.  
4 Okay.

5 (Pause)

6 THE COURT: All right. If the request is to move in  
7 the subpoena response from Lutheran Hospital --

8 MR. WILSON: No objection.

9 THE COURT: Admitted. But I need a copy of it also.

10 MR. DRATEL: Yes. Sorry.

11 (Pause)

12 MR. DRATEL: And I am going to provide a copy.

13 THE COURT: Defendant's E.

14 MR. DRATEL: Yes.

15 THE COURT: Admitted.

16 (Defendant's Exhibit E received in evidence)

17 MR. DRATEL: Thank you.

18 Q. It says on the front page that he was, in fact, a patient  
19 there in 1999, in September of 1999 about six seven days,  
20 right?

21 A. That's what this document says, yep.

22 Q. And your report points out that there were no records from  
23 Lutheran Hospital. That's one of the inconsistencies in his  
24 representation, right?

25 A. I spoke to the representative there.

C8EAABEJH

DR. COCHRANE - CROSS

1 Q. No. That's not my question. My question is, does your  
2 report make a point of saying that he represented that and  
3 there was no verification of that hospitalization?

4 A. The report, yes, indicates that they had no records.

5 Q. Right. And you listed it as your first inconsistency when  
6 you were preparing it.

7 A. I listed it that the CT and the wife report -- is that what  
8 you are referring to?

9 Q. Yeah. It's inconsistencies that he reported that because  
10 it basically didn't exist?

11 A. I had no evidence that he suffered a severe brain injury or  
12 head injury, yes.

13 Q. Those records were devoid, right? That's what this says?

14 A. Yes.

15 Q. So, we'll never know, will we?

16 A. We'll never know what?

17 Q. What that hospitalization involve.

18 A. I don't know if it had to do with an accident, a disease,  
19 dental work, who knows? I have no idea.

20 Q. You think he spent the week in the hospital for dental  
21 work?

22 A. No. That's not what I was trying to say.

23 THE COURT: Next question.

24 THE WITNESS: I was just saying we have no idea what  
25 it's about.

C8EAABEJH

DR. COCHRANE - CROSS

1 Q. Another inconsistency you said also about his hand, right  
2 about his reports, about his hand in your report, you make  
3 quite a bit of that, isn't that correct?

4 A. He reported various reasons for the injury.

5 Q. But on page three of the report --

6 A. Which report?

7 Q. Your report says Dr. Channel noted that Mr. Bejaoui claims  
8 his father cut off the fingers of his left hand. He later  
9 stated this was the result of a farming accident. However, as  
10 noted later in the report, medical examination revealed this is  
11 a congenital condition, right? That incorrect, right?

12 A. I could have been more clear. The last sentence --

13 Q. I am asking you is that correct?

14 A. I can't answer that.

15 THE COURT: Gentlemen, one at a time. Are you asking  
16 whether it's correct that medical examination revealed it to be  
17 a congenital condition? Is that your question?

18 MR. DRATEL: I'll start with that one.

19 Q. Is that correct? Medical examination revealed it to be a  
20 congenital condition?

21 A. In part, yes. They say revealed that at least in part it's  
22 congenital. That's where I could have been more clear.

23 Q. You left it out, right? You left it out?

24 A. That sentence -- but if you look later in the report --

25 Q. But that sentence, you left it out.

C8EAABEJH

DR. COCHRANE - CROSS

1 A. In that sentence I did, yes.

2 Q. In fact, the examination by the radiologist said that it  
3 could be both, that there were evidence of both, that it was  
4 traumatic amputation as well as congenital?

5 A. There wasn't evidence as both. He said he couldn't rule  
6 out that it was both and that the main point that I was trying  
7 to convey was the inconsistencies of whether as he reported  
8 it's congenital, farm accident.

9 Q. Well, didn't he tell the Dr. Hoss at Devens it was  
10 congenital?

11 A. At one point.

12 MR. WILSON: Objection.

13 THE COURT: Mr. Dratel, you have to allow the witness  
14 to answer and then one question, all right.

15 MR. DRATEL: I am trying to fashion these as yes or no  
16 questions, your Honor.

17 THE COURT: I understand. But when you get a response  
18 you are asking multiple questions.

19 MR. DRATEL: I am sorry.

20 THE COURT: That's fair. Thank you.

21 BY MR. DRATEL:

22 Q. You don't have that he said that it was congenital in that  
23 paragraph, right?

24 A. Correct. In that paragraph I do not.

25 Q. Right. In fact, he told Dr. Hoss both he told her that it

C8EAABEJH

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1 was as a result of something that happened to him as well as  
2 congenital, right?

3 A. He gave three explanations for why it happened.

4 Q. In fact, Devens lists the deformity as congenital in its  
5 report, right?

6 A. I believe so.

7 Q. When you confronted him --

8 THE COURT: This is consistent with your view and Dr.  
9 First's view that he is a poor historian?

10 THE WITNESS: Exactly.

11 Q. But for you that's an important inconsistency that you put  
12 in your report on page three in that fashion, right?

13 A. It was an important inconsistency. It was one of many,  
14 yeah, I guess important inconsistencies. It led -- I am sorry.

15 Q. By the way, when Dr. Herbel confronted him with the  
16 findings of the radiologist he said it was both, right?

17 A. The first time he acknowledged that it was congenital, yes.

18 Q. Now, he told Dr. Hoss at Devens, didn't he?

19 A. With us.

20 Q. He said it was both, right?

21 A. He said that it was both to Dr. Herbel.

22 Q. That was my question.

23 A. The answer is "yes".

24 Q. Now, the Devens report you also said there's back pain was  
25 inconsistent, right? His reports of back pain you didn't

C8EAABEJH

DR. COCHRANE - CROSS

1 believe it?

2 A. I don't recall that I said I don't believe his back pain.

3 I believe the medical evaluations revealed that there was no

4 explanation for why he couldn't walk but, again, pain is

5 subjective. He may have legitimate pain.

6 Q. Well, isn't there a whole section in your report about how

7 the MRI only revealed a lumbar problem L4/L5, right, would

8 account for that?

9 A. That what?

10 Q. It wouldn't account for his condition as he presented it in

11 his report?

12 A. That was only one of the examinations. There was lab work

13 to look for inflammatory disease. There was MRI of feet.

14 There were a series of things done that led the medical staff

15 to conclude that there's no basis for why he cannot walk.

16 Q. You know the Devens report at page six also reported that

17 when he was taken to the hospital for the MRI of his back and

18 it showed some problems with the L4/L5 -- withdrawn. Did you

19 ever have back pain?

20 A. Sorry.

21 MR. WILSON: Objection, your Honor.

22 THE COURT: Sustained.

23 Q. At page six of the report is after a dramatic decrease in

24 pain killing medication, his back pain got worse?

25 A. I'm sorry. Where are you at, sir?

C8EAABEJH

DR. COCHRANE - CROSS

1 Q. On page six of the Devens report?

2 A. Could you point me to?

3 Q. Yeah. Yeah. I'll point you to the exact spot. No. I  
4 think that your report actually -- yeah, it's your report.

5 A. Which page?

6 Q. Page 6. Two of Mr. Bejaoui's previous assessment do you  
7 see that?

8 A. Yes.

9 Q. It says with him reporting his pain increased dramatically  
10 after codeine and oxycodone had been discontinued. Right, that  
11 would be logical for someone with back pain, right?

12 A. That would be illogical.

13 Q. In other words, that when you decrease pain medication  
14 their pain increases?

15 A. No. No. He is saying here he reported him reporting his  
16 pain increase when those medications were stopped.

17 Q. That's what I am saying. I'm sorry. You are right.  
18 Wouldn't be logical that after pain medication is discontinued  
19 that someone suffering from back pain would then report  
20 increased pain?

21 A. That would be "yes".

22 Q. And then they gave him dilaudid and then the following  
23 sentence is his back pain improved?

24 A. Correct.

25 Q. That would be another logical reaction when you get



C8EAABEJH

DR. COCHRANE - CROSS

1 something as powerful as ed Claude dilaudid that his back pain  
2 would improve?

3 A. Yeah, potentially, that makes sense.

4 Q. Now, page eight of your report, going to try to take away  
5 his wheelchair, right?

6 A. I am sorry?

7 Q. You didn't take away his wheelchair?

8 A. The staff decided --

9 Q. Are you the decision maker?

10 A. Not on his medical conditions, no.

11 Q. You say that the reasons are because they did not want to  
12 trigger wasteful and unnecessary diversion of medical resources  
13 to address reemergence of pseudo neurological symptoms of  
14 feigned unconsciousness and pseudo seizures as had reportedly  
15 occurred at FMC Devens. Now the pseudo part is all you, right,  
16 not from Devens?

17 A. The pseudo part.

18 Q. Yeah. Pseudo falls, pseudo seizures not from the Devens  
19 report, right?

20 A. I believe and I can look in the report to be sure but I  
21 know they were highly suspect of the seizures and his fall and  
22 unconsciousness.

23 Q. Did they call them pseudo --

24 A. I don't know what word they used but they were suspicious.

25 Q. You felt comfortable characterizing them as something that

C8EAABEJH

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1 happened at Devens as a pseudo?

2 A. Pseudo is clinical term that's used so, yeah, I chose to or  
3 I don't know if I or Dr. Herbel wrote this section but we chose  
4 to use the clinical term as often referred as pseudo and pseudo  
5 neurological.

6 Q. Neither of you were there for any of that that occurred at  
7 Devens, right, but you thought that you should use that term in  
8 the report?

9 A. Our interpretation of his behavior, yes.

10 Q. At Devens?

11 A. Led us to believe, not just at Devens but with led us to  
12 believe that, yes, that is an appropriate way to describe it.

13 Q. Now, they want to take him out of his wheelchair because it  
14 would devote resources. You assigned his physical therapist to  
15 him in his wheelchair. That was the alternative solution?

16 A. Well, he had frequent --

17 Q. I am asking the question. The question is, you assigned a  
18 physical therapist to him as a solution, correct?

19 A. Solution to what?

20 Q. To not taking him out of the wheelchair because you didn't  
21 want to devote the unnecessary resources?

22 A. That was one potential solution.

23 Q. And that's not a valuable resource?

24 A. It's one resource, yes, that's valuable.

25 Q. If he was faking as you suggest who cares whether you take

C8EAABEJH

DR. COCHRANE - CROSS

1 his wheelchair away and he lies on the floor?

2 A. Because -- that's a good question and, actually, we had  
3 several of the medical staff in several discussions about that  
4 and oftentimes when there are patients who can -- we have to  
5 manage their behavior and you have to make tough decisions  
6 about what to give, what to let them have access, like some  
7 people you not sure if they need crutches or not. Well,  
8 crutches can be a dangerous thing in the prison. So whether  
9 they're give an individual crutches who may or may not need  
10 them, those are difficult management decisions to make and  
11 ultimately the medical staff decided in this case they didn't  
12 want to have to deal with more exaggerated or more difficult  
13 behaviors by Mr. Bejaoui. They thought that the lesser of two  
14 evils or the easiest thing would be is to let him maintain the  
15 wheelchair.

16 Q. If you took away the wheelchair would be a good test of  
17 somatoform disorder?

18 A. Not necessarily because if he falls on the floor like he  
19 did at Devens, if he acts very dramatic like he has, it doesn't  
20 tell you it's somatoform disorder or malingering. That  
21 wouldn't be very helpful.

22 Q. You leave him for a day or two and not eating and he gets  
23 up and goes and gets food?

24 A. I don't think that would be appropriate to do. So I don't  
25 know if that would again be an appropriate test of somatization

C8EAABEJH

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1 or malingering.

2 Q. Now, yesterday you testified about something that you  
3 described as volitional because he resumed medication instead  
4 of getting a roommate. That was your interpretation of what  
5 happened, right?

6 A. I don't recall my word was volitional. I may have said  
7 that.

8 Q. But, in fact, is that what the import of your testimony  
9 was?

10 A. That he was capable of doing things when he had a goal in  
11 mind, yes.

12 Q. Okay. Now isn't it a fact as you testified yesterday that  
13 he was told in addition that he would get a roommate, he was  
14 also told that stopping some of those medications would be  
15 dangerous to his health?

16 A. I believe he was told there could be potential danger, yes.

17 Q. And, in fact, he only resumed the two that you told -- not  
18 you but the staff whether it was you or a staff person, you  
19 only resume the two that, in fact, would have been dangerous to  
20 stop, high blood pressure medication and the anticonvulsive  
21 medication?

22 A. Not entirely. He resumed all of them a few days later but,  
23 yes, initially he only resumed those two.

24 Q. And he didn't resume the antipsychotic pain medication  
25 which would not have been dangerous to continue, correct?

C8EAABEJH

DR. COCHRANE - CROSS

1 A. I don't think he was on a antipsychotic at that point. I  
2 think it was antidepressant. I could check to be sure. Your  
3 question again? I am sorry.

4 Q. I think you answered it.

5 A. Okay.

6 THE COURT: Mr. Dratel, I don't understand the thrust  
7 of that last series. What are you trying to show in that last  
8 series of questions?

9 MR. DRATEL: That there was another explanation rather  
10 than it being choosing between oh, I don't want a roommate so  
11 I'll go back on the medication. He went back on the medication  
12 because he only went to two that were a threat and he didn't  
13 resume the other two.

14 THE COURT: All right.

15 BY MR. DRATEL:

16 Q. Talking about hearing voices. Your report at 12 --

17 A. Page 12, okay.

18 Q. Let's look at the last sentence of that paragraph, not the  
19 full paragraph the paragraph that continues from the prior  
20 page.

21 A. Yes.

22 Q. Let me read it. The voracity of this -- this is the about  
23 him hearing voices, right?

24 A. Yes, it is.

25 Q. The voracity of this was considered questionable as the

C8EAABEJH

DR. COCHRANE - CROSS

1 account in Dr. Channel's report of him talking to the voices --  
2 voices in quotes during the interview sounded contrived and he  
3 is not noted to appear preoccupied by internal stimuli, right?

4 A. That's what it says, yes.

5 Q. In fact, "contrived" is your word, right?

6 A. Yeah, that's my sentence.

7 Q. Not in Dr. Channel's report at all not in the Devens'  
8 report at all when they talk about that?

9 A. Correct. It's my --

10 Q. But one could read it as if it's from Dr. Channel. One who  
11 hadn't look at both reports, right?

12 A. I suppose to --

13 Q. And you didn't there, right?

14 A. In Devens, no.

15 Q. But you decided it was contrived?

16 A. The way it was described to me, him responding to the  
17 interview to a voice sounded contrived.

18 Q. No. No. The Devens, you aren't there. You decided it was  
19 contrived in your interview with --

20 A. I didn't firmly decide it. I said it sounded as if and it  
21 was considered questionable. So I had doubts, yes, but --

22 Q. They don't say it's your doubts, right?

23 A. Sorry?

24 Q. Doesn't say that it's your doubts?

25 A. I wrote this report, so it is my sentence. I am not

C8EAABEJH

DR. COCHRANE - CROSS

1 quoting Dr. Channel.

2 Q. You are substituting your opinion?

3 A. I don't think that's what I was trying to do. I was trying  
4 to describe past behavior.

5 Q. You wrote that from the very first time you saw him, right?

6 A. Wrote what?

7 Q. On February 3rd your initial interview you wrote that was  
8 contrived?

9 A. That was earlier on. That might have been the first  
10 interview, yes.

11 Q. In fact, you made up your mind from the start he was  
12 malingering and he was feigning?

13 A. No, I did not.

14 Q. Let me show you what's been marked as 3501-F and I'll bring  
15 you a copy or you have it there?

16 A. Yes.

17 Q. Look at 3501-F.

18 MR. DRATEL: Do you have a copy, your Honor?

19 THE COURT: Yes.

20 Q. Do you have that in front of you?

21 A. Yes.

22 Q. That is from Dr. Herbel?

23 A. Herbel.

24 Q. And that's a report from him, right?

25 A. Yes.

C8EAABEJH

DR. COCHRANE - CROSS

1 Q. And if you look at the second paragraph where it says Dr.  
2 Cochrane assess, Dr. Cochrane assessed him on Friday, February  
3 3, 2012 and concluded he was an unreliable historian, was  
4 somatizing and or malingering other clinical presentations and  
5 was feigning psychosis. So from -- right, it says that?

6 A. That's what Dr. Herbel we wrote, yeah.

7 Q. He got that from you, right, from Dr. Cochrane?

8 A. Yeah. He knew from my encounter with Mr. Bejaoui I had  
9 doubts.

10 Q. It says you concluded he is feigning psychosis. That's  
11 what it says, right? From the very first time you saw him,  
12 right, one interview?

13 A. Can I answer now? I did not reach a firm conclusion as in  
14 all initial meetings. You have a preliminary hypothesis and I  
15 believed after reviewing the records and my initial meeting  
16 with Mr. Bejaoui that, yes, he was likely somatizing and/or  
17 malingering symptoms.

18 Q. It says "and feigning his psychosis".

19 A. That's what Dr. Herbel wrote.

20 Q. He is a poor historian?

21 A. No. I am just saying those are his words, not mine.

22 Q. Are you saying that in a report like this he got it wrong?

23 A. That's not what I am saying at all.

24 THE COURT: But the point is that Herbel --

25 THE WITNESS: Yes.



C8EAABEJH

DR. COCHRANE - CROSS

1 THE COURT: -- is saying here that you, Cochrane,  
2 concluded as a result of the February 3 initial meeting.

3 THE WITNESS: That would have been my first meeting.

4 THE COURT: That the defendant was feigning psychosis.  
5 Is that true?

6 THE WITNESS: Yes, it's true that Dr. Herbel,  
7 apparently, believed --

8 THE COURT: He clearly did say that you reached that  
9 conclusion.

10 THE WITNESS: He said I reached that conclusion. Now  
11 it's a little misleading to say it's only because of the  
12 February 3rd interview because at that point I had reviewed all  
13 of the prior reports and some other information. But Dr.  
14 Herbel did say that I concluded, I personally, wouldn't have  
15 chosen such a strong term because I had serious doubts but he  
16 used the word "conclude".

17 THE COURT: What Mr. Dratel is inquiring into is  
18 whether your colleague who presumably you know and you have  
19 confidence in, you believe and indicated a moment ago was a  
20 reliable historian. He Herbel concluded that you, Cochrane,  
21 had concluded that he is, the defendant was feigning psychosis.

22 THE WITNESS: Apparently, yes.

23 Q. And Dr. Herbel also signed the report, yes?

24 A. Correct.

25 Q. Just to look back at 3501-F, you look at the top left

C8EAABEJH

DR. COCHRANE - CROSS

1 corner under Mondher Bejaoui and then that there's a date of  
2 birth then there's the at date of the note which is February 6,  
3 2012, three days after your initial assessment.

4 A. Correct.

5 THE COURT: All right. Let's break for lunch. Can  
6 you conclude relatively shortly after lunch?

7 MR. DRATEL: I'll you'll try to streamline it a little  
8 bit. I can get it done within a half hour to 40 minutes. I  
9 can do that, all right. Well, we'll pick it up at 2:30 today.  
10 All right 2:30. Try to get you home tonight, Dr. Cochrane.

11 THE WITNESS: Thank you.

12 (Luncheon recess)

13 AFTERNOON SESSION

14 2:35 p.m.

15 THE COURT: Take the stand again.

16 Be seated in the courtroom.

17 Bring the defendant out.

18 (Pause)

19 THE COURT: Let's continue with the cross-examination  
20 and conclude the cross-examination of Dr. Cochrane.

21 MR. DRATEL: Yes, your Honor.

22 THE COURT: You've not moved 3501-H and 3501-F into  
23 evidence. Do you intend to do so?

24 MR. DRATEL: I thought I did 01-H, your Honor.

25 MR. WILSON: That's my recollection as well, your

C8EAABEJH

DR. COCHRANE - CROSS

1 Honor.

2 THE COURT: Granted. It is now admitted and 3501-F.

3 MR. DRATEL: Yes, I would move that into evidence.

4 THE COURT: Okay. 50-F admitted as well.

5 (Defendant's Exhibits 3501-F, 3501-H received in  
6 evidence)

7 MR. DRATEL: Thank you, your Honor.

8 THE COURT: Received.

9 BY MR. DRATEL:

10 Q. Before earlier today during your cross-examination you  
11 talked about when we talked about the -- you described  
12 Mr. Bejaoui's hearing voices as described in the Devens report  
13 as contrived, right?

14 A. Yes, it sounded contrived.

15 Q. And, in fact, you reached that conclusion the very first  
16 day you saw him, right, on February 3rd?

17 A. Before I saw him when I read the report I had a suspicion.

18 Q. And now I want to move to March 8th. And that's the day  
19 you had the conversation with him where the term "railroad"  
20 came up, right?

21 A. Yes.

22 Q. And you've decided that he deliberately distorted what you  
23 said, right?

24 A. I believe so.

25 Q. And there's no evidence that he deliberately did that,

C8EAABEJH

DR. COCHRANE - CROSS

1 right, but there is -- withdrawn.

2 He could have just simply misapprehended that remark,  
3 correct?

4 A. "Misapprehended"?

5 Q. Correct, misunderstood you.

6 A. I don't believe so.

7 Q. That is not my question. You don't believe there is a  
8 chance he could have misunderstood you?

9 A. I believe there could be an incredibly small chance.

10 Q. That's why you believe he intentionally a distorted that?

11 A. I believe he intentionally distorted that conversation.

12 Q. The evidence that he did so intentionally is what?

13 A. Couple things. One, I don't believe he suffers from  
14 dementia or serious cognitive problems that would interfere  
15 with his ability to comprehend the conversation.

16 Secondly, he had used the term "railroad" previously.  
17 And even during my discussion with him said I have been  
18 railroaded my whole life, suggesting to me at the time he  
19 understood the context quite clearly what I was talking about.

20 Q. But he never said that he didn't understand what railroad  
21 meant. His problem was he said he interpreted you saying that  
22 you were going to railroad him or that he was going to be  
23 railroaded, right?

24 MR. WILSON: Objection, your Honor. Could we get a  
25 cleaner question?

C8EAABEJH

DR. COCHRANE - CROSS

1 MR. DRATEL: Sure.

2 Q. From the nature of his conversations with his wife which  
3 you've now read, right?

4 A. Yes, I've read some before but I have read all --

5 Q. Could you please listen to the question?

6 THE COURT: Gentlemen, we know he read the  
7 conversations. There's been a great deal of testimony about  
8 it. So you don't even need that question. I understand why  
9 you are doing it but ask the question and invite a fulsome  
10 answer. Try to if you can answer questions yes or not, please  
11 do so.

12 THE WITNESS: I'll try, your Honor.

13 THE COURT: Next question.

14 BY MR. DRATEL:

15 Q. In the conversations with his wife it's clear he knows what  
16 the term "railroad" means, right?

17 A. It appears so.

18 Q. It's just a question of how he is going to be railroaded  
19 that is of concern to him, correct? Are they going to poison  
20 me? Are they going to -- what are they going do to me? How  
21 are they going to railroad me? Isn't that what it says?

22 A. He says he doesn't understand the word "railroad" but he  
23 also stated as well, yes.

24 Q. So you think that someone has to have a majoring cognitive  
25 disorder to misunderstand a conversation?

C8EAABEJH

DR. COCHRANE - CROSS

1 A. No. There's misunderstandings all the time.

2 Q. But you decide -- withdrawn.

3 In the conversations with his wife, right, he never  
4 says that he intentionally is distorting your conversation,  
5 right?

6 A. Correct.

7 Q. He says they told me they were going to railroad me. I am  
8 afraid of this guy. Either they are going to railroad me or  
9 going to poison me. Something to that effect?

10 A. Yes.

11 Q. And that's consistent. He never says, listen, he told me I  
12 was going to get railroaded but I am turning it into something  
13 where he is going to railroad me?

14 A. No, he didn't acknowledge that.

15 Q. On the collage, the same thing, right? The collage taken  
16 off his wall it is in your report, same thing, right? He  
17 doesn't say Dr. Cochrane told me that I was going to be  
18 railroaded but now I am going to say that Dr. Cochrane is going  
19 to railroad me. There's no sign of intentional distortion  
20 there, right?

21 A. You lost me. I am not sure where the pictures --

22 Q. It's in the collage. There's text in the collage about  
23 this, is there not?

24 A. This is text in the collage about it. I believe some of  
25 that --

C8EAABEJH

DR. COCHRANE - CROSS

1 Q. But it's consistent with him thinking you were going to  
2 railroad him, correct?

3 A. I guess so.

4 Q. And is it fair to say that paranoia might have an impact on  
5 how he received your information?

6 A. Paranoia could impact how someone receives that  
7 information.

8 Q. In fact, in your report you said that he turned himself  
9 into the victim.

10 A. I believe I said something to that effect.

11 Q. And, in fact, he told you that there was a conspiracy  
12 against him, right?

13 A. Yes, he said that.

14 Q. Now, I want to talk about the telephone calls. Do you know  
15 what he sounded like before January 7, 2011?

16 A. I'd have to look at the dates.

17 Q. The calls are all from 2011. I am saying before January  
18 2011.

19 A. 2011, okay.

20 Q. Do you know what he sounded like? Have you ever heard a  
21 recording of him?

22 A. No, I have not.

23 Q. Now, you were monitoring and listening to his recordings as  
24 early as February 23, which is the first note we see in, I  
25 think it's 3501-H?

C8EAABEJH

DR. COCHRANE - CROSS

1 A. I'll accept that that's accurate. I'd have to look it up  
2 to be sure, yeah.

3 Q. And by the way, you know you had a during the questioning  
4 on direct the question was, you were asked whether he fears the  
5 attorneys, right? That's not the only element of paranoia,  
6 right? It's trust too, right?

7 A. Correct.

8 Q. And there's evidence that he didn't trust the attorneys?

9 A. There's evidence he doesn't like them.

10 Q. There's evidence he doesn't trust the attorneys?

11 A. Yeah, I would agree with that.

12 Q. And, in fact, on Government Exhibit 7 which is that January  
13 29 call at page five towards the top, there's a paragraph where  
14 he describes this is one that you went over with Mr. Wilson  
15 where you described a visit?

16 A. Yeah.

17 Q. Have you any idea whether that's an accurate depiction of  
18 what occurred at that meeting or not, right?

19 A. No. I wasn't privy to that conversation.

20 Q. So that could be a paranoid version of what occurred at  
21 that meeting?

22 A. Which part? I'm sorry. Which part is the paranoid?

23 Q. Well, when he talks about if -- that he asked me do I  
24 understand, do I not understand? And I said the following to  
25 him. Not I, but he says that he said something to me and that



C8EAABEJH

DR. COCHRANE - CROSS

1 he left the room?

2 A. I am sorry. I might be on the wrong page or part.

3 Q. I think it's page five.

4 A. Page five, okay. I am on page two. That explains it. I'm  
5 sorry. Your question again?

6 Q. Just that I'll leave it at just that, you weren't there so  
7 you don't know what happened in that meeting between him and  
8 me, right?

9 A. That's correct.

10 Q. Now, let's look at your report on page 22, please.  
11 Starting with that first sentence you are talking about the  
12 recordings, right?

13 A. Yes, that's true.

14 Q. Okay. Now, he engaged in routine conversations with his  
15 wife and a friend on several occasions speaking clearly, calmly  
16 and coherently on each occasion, right?

17 A. Yes.

18 Q. In fact, you hadn't to listen to all the calls at that  
19 point?

20 A. As I said I've listened to a random sample.

21 Q. So you don't know about each occasion?

22 A. Only the occasions I listened to.

23 Q. Well, you don't say that here, do you?

24 A. Well, I am not sure. I don't say what.

25 THE COURT: You indicate in -- that you had not

C8EAABEJH

DR. COCHRANE - CROSS

1 listened to all the calls.

2 THE WITNESS: I don't believe I indicated either way  
3 whether I listened to all the calls or a certain number, no,  
4 your Honor.

5 MR. DRATEL: The witness has the book. I was  
6 wondering if the government has an additional binder by any  
7 chance of the exhibits. No? Okay. But if you could help me  
8 with the exhibit numbers.

9 MR. WILSON: Sure. What do you need?

10 MR. DRATEL: January 29, not the first call but the  
11 second call, January 29. Government Six. We'll skip that one  
12 and go straight to February 6.

13 MR. WILSON: That's government 8.

14 Q. If you could look at page -- go to page 6 and 7. Let's  
15 look at page 6, line 33.

16 A. Yes.

17 Q. Where it says they doing hate crime on me right now, right?

18 A. Yes.

19 Q. Then page 7, line 7: I have proof, Maria, they took a  
20 picture with a camera and everything where they hit me in my  
21 hands and hit me in my head. I don't know the officer's name  
22 but they made a complaint.

23 Then if you go down to 24: They lied. They did it,  
24 Maria, by, did it on purpose because they don't like me. They  
25 just did it by purpose.

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1           So now let's go to 27. 27 is Government Exhibit 9, I  
2       guess.

3           THE COURT: Yes.

4       Q. We'll go to two-nine which is Government Exhibit 11. Let's  
5       go to page four, line 16. They want to kill me. Yeah, they  
6       want to kill me over here. That's what they planning to do.  
7       But it's okay. You tell them whatever you know whatever you do  
8       you just tell them. Remember that people are not fair, you  
9       know. Then some of these we've seen already. Go over to page  
10      six. There's a whole paragraph about a cover-up. Do you see  
11      that on line 22?

12      A. On page 6.

13      Q. Yes.

14      A. Yes.

15      Q. And if you look at page 7, the paragraph starting at line  
16      4.

17      A. I am sorry. Page 7.

18      Q. Line 4 where it says I am going to say something. I don't  
19      even know what it is. So you are saying that he is coherent on  
20      all of those recordings on each occasion. Is that still your  
21      conclusion?

22      A. Yes, I understand each statement that he makes here.

23      Q. No. No. I said is he coherent?

24      A. Yes.

25      Q. So that coherent when he says they're going to kill me. So

C8EAABEJH

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1 you can understand what he is saying that's coherent, that's  
2 how you define coherent, if you could understand it?

3 A. Right. His speech is coherent.

4 Q. Okay. Let's look then at the next one, February 10, page  
5 two.

6 A. Which exhibit is it?

7 Q. I think it's 12, Government Exhibit 12.

8 A. Page two?

9 Q. Line 19 I. Am really convinced that these people they  
10 wanted to kill me because the things that I know or the  
11 mathematical algorithm and all that stuff.

12 MR. WILSON: Could we have the rest for completeness?

13 Q. But I'll tell the point the lady when she gets the phone  
14 call on Monday thinks that she can tell you or her husband that  
15 she doesn't understand them any more, you understand. And  
16 write something different. Things are very different. You  
17 follow me? Government has already done this, the part about  
18 the algorithm, you understand?

19 A. Yes.

20 Q. Is it coherent? So in other words, if I say I am a space  
21 alien, I am?

22 A. It's delusional but it's a coherent speech.

23 Q. That's what you were intending to convey when you said he  
24 was coherent in all of it?

25 A. Yes. If you would like me to explain I will.

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1 Q. No. You've explained it.

2 A. Okay.

3 Q. We've said some time now that I know what you mean.

4 MR. WILSON: Objection.

5 THE COURT: Well, you've just spent the time that you  
6 would have saved and we can continue but I suggest you just ask  
7 another question.

8 MR. DRATEL: Thank you, your Honor.

9 Q. Now, with his friend Riatt there were instances where he  
10 was slurring, right?

11 A. I believe so.

12 Q. Slightly incoherent?

13 A. I'd have to see the exact statements to make that  
14 determination.

15 Q. That he is crying during six or seven of those calls,  
16 right, at least?

17 A. I don't know the number but I do recall he was crying on  
18 some phone calls.

19 Q. The transcripts in the record. Now, yesterday during your  
20 direct testimony there were those calls at the end of the day  
21 where you said it was evidence of coaching, right?

22 A. Correct.

23 Q. And by the way, you were asked about the Devens report and  
24 the notation in the Devens report where Mr. Bejaoui said he is  
25 writing like a little kid, right?

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1 A. Yeah. I vaguely recall something like that.

2 Q. You were asked about that, right?

3 A. I believe so.

4 Q. And, in fact, the Devens report was written, I guess, about  
5 six months before that conversation on the telephone, right?

6 A. I'd have to look at the dates.

7 Q. Well, how is October 6 versus February where it says  
8 February 10, how is that?

9 A. About four months counting October or not counting.

10 THE COURT: No, February through October.

11 THE WITNESS: February to October, yeah, I guess that  
12 would be about eight months.

13 Q. No. No. October to February, October 6 is the date of the  
14 Devens report?

15 A. October. So it is October to February.

16 Q. But has the date of the report she, obviously, spoke to  
17 Devens before the report was written?

18 A. You got me confused.

19 THE COURT: Sir, are you going October to February or  
20 February to October?

21 MR. DRATEL: October to February.

22 THE COURT: How many months is that?

23 THE WITNESS: If you don't count October I count four  
24 months.

25 Q. You do count October?

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1 A. Five months.

2 Q. October?

3 A. That would be five months.

4 Q. She'd obviously been spoken to before the report was  
5 written, right, Mrs.~Bejaoui?

6 A. Yes.

7 Q. So four to five months, maybe more before this telephone  
8 conversation she's reporting that the letters, not the  
9 handwriting she says the letters are like from a little kid,  
10 right?

11 A. Right.

12 Q. In the Devens report, correct, the description?

13 A. That's in the Devens report, yes.

14 Q. Now, Dr. Herbel spoke to Mrs.~Bejaoui, right?

15 A. That's correct.

16 Q. Now, there's a whole section of your report that includes  
17 an account of that interview, right?

18 A. Yeah, that interview was summarized in the report.

19 Q. Right. And that's at page four, correct?

20 A. Correct.

21 Q. It's two paragraphs that consume most of the page, right?

22 A. Yes.

23 Q. Now, if you need to see the transcripts of the  
24 conversations again, by all means look at them. It would be  
25 Government Exhibit 11, 12 and 13, is that right? February 10,

C8EAABEJH

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1 11 and 12 the conversations that we're talking about the  
2 coaching conversations, right?

3 A. Okay.

4 Q. Is there anything in those, in that -- is there anything in  
5 the conversations that Mr. Bejaoui has with his wife that is  
6 supposedly about coaching that's any of it show up in this  
7 interview?

8 A. I don't know. I'd have to look carefully.

9 Q. Anything about Rikers Island in there?

10 A. In the?

11 Q. In the interview with Dr. Herbel?

12 A. Let me review. Yes, there is.

13 Q. Where would that be?

14 A. The second paragraph, the two paragraphs you are referring,  
15 toward the bottom.

16 Q. He spent a year in Rikers Island and was tossed out. Then  
17 the feds picked him up. I am talking about how he reacted,  
18 about all the things in that coaching paragraph that you saw is  
19 coaching, not in there about Rikers Island, right?

20 A. I don't see anything, no.

21 Q. Nothing about paranoia, right?

22 A. I don't believe so. Let me finish skimming this section.

23 Q. Don't skim. Read it carefully.

24 A. Okay.

25 (Pause)



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1 A. No, there's nothing about paranoia.

2 Q. Is there anything about talked about him about killing?

3 A. No.

4 Q. Is there any talk about weird letters?

5 A. No.

6 Q. Is there any talk about handwriting being different?

7 A. No.

8 Q. Is there anything about religion?

9 A. No.

10 Q. Now, in an earlier conversation I think we just actually  
11 saw one of them. In Government Exhibit 11 he tells her to tell  
12 the truth, right, at page two?

13 A. Page two -- I'm sorry -- of 11, Government 11.

14 Q. Sorry. Not page 2. Hang on. But do you recall that?  
15 It's actually February 9. What is February 9? Is that 11?

16 MR. WILSON: Government Exhibit 11.

17 MR. DRATEL: I am sorry I got confused.

18 THE COURT: Government Exhibit 11, what page?

19 MR. DRATEL: Page three, line 13.

20 THE WITNESS: Yes, I am sorry. Could you repeat the  
21 question please?

22 Q. Yeah. Doesn't he tell her it's okay, just give them the  
23 truth?

24 A. At that line, yes, he does.

25 Q. And the next page, page 4 starting with line 16 just tell

C8EAABEJH

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1       them whatever you know, right?

2       A.   Yes, he makes that statement, yes.

3       Q.   Now, let's assume for a minute there that the conversations  
4       are coaching conversations, the Government Exhibits 12 and 13  
5       and we're 11 -- allegation at 11 itself has any coaching in it.  
6       What in that that he says to that Mr. Bejaoui says to his wife  
7       what part of that is untrue?

8       A.   What part of these two phone calls?

9       Q.   Yes, I am saying -- what I am saying is what part of what  
10      he tells her that the lady should say, what part of that is  
11      untrue about him?

12      A.   About writing weird letters and not understanding things  
13      and killing, killing that.

14      Q.   Talk about killing and paranoid and that he doesn't like to  
15      talk about Rikers Island, what of that is untrue?

16      A.   What of it is untrue?

17      Q.   Yes, that you can prove.

18      A.   I don't understand.

19      Q.   What is untrue? What is demonstratively false about what  
20      he told her to say? Do you know whether he likes to talk about  
21      Rikers Island with her?

22      A.   I do. I know what --

23      Q.   Whether he likes to talk about Rikers Island with her?

24      A.   I don't know. All I know is he informed her about things  
25      to say to the doctors about Rikers Island and about other

C8EAABEJH

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1 events.

2 Q. You've testified 100 times, right?

3 A. No. This will be the 98th time, 98 times. Well, I know  
4 you'd criticize me --

5 THE COURT: All right. Let's move forward.

6 Q. Isn't it true every time in advance of testimony you have  
7 reviewed your testimony with the lawyers before you took an  
8 oath to testify truthfully?

9 MR. WILSON: Objection.

10 THE COURT: Well, just like every other witness.  
11 Proceed. Next question.

12 Q. Isn't it true that you've prepared with lawyers?

13 A. In many cases, yes.

14 Q. And they've sometimes they tell you what they expect in  
15 terms of testimony based on your report, based on documents  
16 they'll go over with you questions and answers?

17 A. They will go over questions and answers. They don't tell  
18 me what to say.

19 Q. Have they ever given you an expectation of what they expect  
20 to elicit in from you on the stand?

21 A. I don't recall anyone ever giving me an expectation.

22 However, I do make it clear that I don't work for you. I'll be  
23 happy to answer any questions you have and prepare for so my  
24 testimony will be clear but it's my opinion and, again, I can't  
25 alter my opinion based on their desire.

C8EAABEJH

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1 Q. So, in other words, no one's ever said to you, doctor, in  
2 your report it says X, Y and Z, so I am going to ask you X, Y  
3 and Z and that's the answer we're looking for because it comes  
4 from your report. No one's ever said that to you?

5 A. Not that like that, no.

6 THE COURT: Just a minute. I'll allow.

7 Q. How they said --

8 A. They said I'd like to ask you questions about what you have  
9 in your report. If I asked you this question what would your  
10 truthful answer be?

11 Q. Have they ever added to it if you left something out?

12 A. What do you mean?

13 Q. Like if you said, let's say for example you're being  
14 interviewed by a defense attorney and you've found someone not  
15 competent based on major depressive disorder and somatoform  
16 disorder, right? And they ask you a question about the report  
17 and you only discussed something major depressive disorder and  
18 no one has ever said to you -- you also talk about somatoform  
19 disorder and that would be something that would be relevant as  
20 well for you to put in your answer. Never had that  
21 conversation like that?

22 A. Well, sometimes attorneys have leading questions and want  
23 me to, perhaps, say things a certain way and I tell them what I  
24 can and what I cannot say truthfully.

25 Q. Right. Truthfully?

C8EAABEJH

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1 MR. WILSON: Objection.

2 THE COURT: Let's move on. I have no reason to think  
3 his preparation was different than any other witness. Proceed.

4 MR. DRATEL: Thank you.

5 Q. Even with coaching, how does that explain the other aspects  
6 of the calls? Withdrawn.

7 In your mind that explains all other aspects of the  
8 calls that are unusual?

9 A. Not all. In fact, I wasn't aware of the coaching at the  
10 time I wrote my report.

11 Q. Now, I'd like to play a call that we actually heard  
12 yesterday. I'd like to play it again. February 9, I don't  
13 know if we have it queued up to the particular page but I am  
14 interested in page six.

15 A. I am sorry. Which?

16 Q. This is government's 11, page six, starting at line 14.  
17 Just It set it up on the transcript he is talking about his  
18 background and he is giving information to his wife about his  
19 mother's family and their name, right?

20 A. What page? I am sorry.

21 Q. Six.

22 A. Yes.

23 Q. Okay. Could we just play that section.

24 (Audiotape played)

25 Q. Just a little. Earlier?

C8EAABEJH

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1 A. I was going to say I am lost.

2 Q. We're about a page and a half early.

3 THE COURT: Where do you intend to start, sir? Page  
4 six, what line?

5 MR. DRATEL: Line 14.

6 THE COURT: All right.

7 (Audiotape played)

8 THE COURT: That was the middle of page five. I think  
9 you should just run it and find it right now.

10 (Audiotape played)

11 Q. Now that statement in that call, in that pause, you heard  
12 the pause?

13 A. Yes.

14 Q. Feigned?

15 A. Well, I don't know if that pause was feigned.

16 Q. But the memory failure, that's part of it, feigned?

17 A. I am not sure what you are asking.

18 THE COURT: He says I have the memory issues, right?  
19 Now the question is, do you believe the defendant was feigning  
20 having memory issues right now?

21 THE WITNESS: With this one statement, no. I would  
22 have to again look at the context of all the calls but it's  
23 either his perception of not remembering things real well at  
24 the moment or it's feigned. I don't know which.

25 Q. You don't know?

C8EAABEJH

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1 A. Correct.

2 MR. DRATEL: Could we play March 19 please.  
3 Government's 4 please. Thank you.

4 (Audiotape played)

5 BY MR. DRATEL:

6 Q. Mr. Bejaoui's affect during that call, real or fake?

7 A. I think it's very dramatic.

8 THE COURT: "Dramatic" or "traumatic"?

9 THE WITNESS: Dramatic, your Honor, an exaggeration of  
10 a dramatic presentation, yes.

11 Q. But real or fake?

12 A. Is what real, the whole conversation?

13 Q. Your opinion of his affect during the call?

14 A. His affect seemed, he seemed legitimately distressed.

15 Q. And you didn't order anybody to assault him, right?

16 A. No. In fact, no one did assault him.

17 Q. So that was somewhat delusional in that call?

18 A. That was a distortion. I would not call it a delusion. I  
19 would call it a distortion of a plea or sympathy, perhaps, but  
20 I don't believe he was delusional as you've heard me testify  
21 before.

22 THE COURT: Mr. Dratel, do you happen to remember what  
23 the record reflects as to the approximate date that Dr. First  
24 told the defendant that the calls were being monitored and he  
25 had listened to them?

C8EAABEJH

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1 MR. DRATEL: This is a call from Butner. It's well  
2 after this time.

3 THE COURT: It's well after?

4 MR. DRATEL: Yes. He is already back at MDC.

5 THE COURT: That only Dr. First sees him first when he  
6 is at MDC.

7 MR. DRATEL: Correct.

8 THE COURT: After Butner. Thank you.

9 BY MR. DRATEL:

10 Q. Paranoid?

11 A. What?

12 Q. Is there paranoia in the call?

13 A. He made statements that on the surface would sound  
14 paranoid, yes.

15 Q. And going back to page 22 of your report where you say that  
16 he engaged in routine conversations with his wife and friend on  
17 several occasions speaking calmly and clearly on each occasion.  
18 Would you characterize that call that way?

19 A. No. I didn't listen to this call when I wrote the report  
20 I'd characterize this as he is much more distraught. He  
21 conveys the points that he wants to convey. You understand  
22 what he is trying to convey but it's different, certainly, in  
23 tone and affect.

24 Q. Is there secondary gain in that call?

25 A. Perhaps primary gain is how I would put it.



C8EAABEJH

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1 Q. But is there secondary gain in the call?

2 A. Maybe.

3 Q. What's the secondary gain for his affect or his distraught  
4 conversation there?

5 A. I would say that the gain I believe like many other times  
6 he's engaged in is to elicit sympathy and support from loved  
7 ones.

8 Q. Which is part of the disorder, right?

9 A. Part of what disorder?

10 Q. Munchausen?

11 A. Munchausen. Well, that's a somatoform disorder. Are you  
12 saying that that's part of Munchausen?

13 Q. I am saying as somatoform what we talked about before  
14 factitious disorder, right, when he talked about wanting to get  
15 on the sick role --

16 A. That could be interpreted that way, sure.

17 Q. Any secondary gain that you could see from that other  
18 conversation where he has that discernible pause and then he  
19 says I can't remember when he is in a conversation talking  
20 about something completely unrelated to anything we've talked  
21 about that's the substance of this case, the one we just  
22 listened to before, that little snippet. What's the eight  
23 secondary gain?

24 A. He doesn't remember, if he doesn't remember? I don't know  
25 if there's secondary gain. I mean we're all forgetful and,

C8EAABEJH

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1 perhaps, this is a legitimate memory, something he doesn't  
2 remember or, again, he's eliciting sympathy or he does remember  
3 and he is trying to reiterate with her, see how impaired I am.  
4 See how impaired I am.

5 Q. Okay. Now, when you, in preparation for your testimony you  
6 talked about secondary gain being to avoid prosecution and  
7 deportation, right?

8 A. Yes.

9 Q. And earlier you only talked about deportation, right, in  
10 your direct testimony at the end there?

11 A. Earlier today.

12 Q. Yes.

13 A. I only talked about deportation.

14 Q. Right.

15 A. I believe I talked about deportation and desire to get back  
16 to Brooklyn or Manhattan.

17 Q. Okay. Now you heard at the end of that call that his wife  
18 is telling him if he pleads guilty he gets time-served, right?

19 A. Which call?

20 Q. The most recent one, the one where he is crying throughout?

21 THE COURT: The March 19th call?

22 MR. DRATEL: Government's 27.

23 THE WITNESS: Can you point me to the page? I am  
24 sorry.

25 Q. Sure. Page 7, line 27.

C8EAABEJH

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1 A. When he decided to plead?

2 Q. Keep going down.

3 A. Let's say -- you mean where he says, let's say if he  
4 changes his plea?

5 Q. Yes. The entry that starts with Maria on line 27, page 7.

6 A. Okay. And your question again? I'm sorry.

7 THE COURT: Is she telling him that if he pleads he's  
8 going to get time-served. And the next question is going to  
9 be, well, doesn't he -- can't he gain -- doesn't he have  
10 something to gain by doing that? Start with the first  
11 question.

12 THE WITNESS: She is conveying that that's what -- a  
13 person named Laura, yes, conveyed.

14 Q. You don't think she means "Lindsey"?

15 A. Perhaps. I am not sure who she was referring to.

16 Q. Now, so -- and that plea offer was communicated in  
17 December, December 6th of 2011?

18 A. I don't know.

19 Q. Well, I do need to --

20 MS. KOVNER: I am not sure what you asked him.

21 MR. DRATEL: Oh, that the plea offer was communicated  
22 December 6, 2011.

23 THE COURT: What was the question?

24 BY MR. DRATEL:

25 Q. I am saying that in terms of secondary gain, knowing that

C8EAABEJH

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1 he could get out of prison it's been communicated to him in  
2 this call and, perhaps, in other ways that he could get -- that  
3 he has a shot a realistic shot at time-served and here she's  
4 telling him time-served. If he pleads guilty and what's the  
5 secondary gain of continuing to say he doesn't remember and not  
6 doing that?

7 A. Because --

8 Q. In the context of the prosecution let's separate them out  
9 prosecution and deportation. In terms of the prosecution, is  
10 there any secondary gain in reducing that offer?

11 A. In terms of prosecution, no, it wouldn't appear. It's just  
12 the prosecution. No, I would agree with you.

13 Q. And you also mentioned the deportation, right?

14 A. His fear of being deported, right.

15 Q. And you say that -- one of the reporters by the way, from  
16 whom you learned about deportation, in fact, probably more  
17 Ms. Kovner talked to you about -- withdrawn.

18 Ms. Kovner talked to you in your interview with her  
19 before you got the report that fear of deportation could be a  
20 motive, right?

21 A. That was not a conversation she had with me. It was with  
22 Dr. Herbel.

23 Q. In addition, Dr. Herbel also spoke with Ms. Bejaoui, right?

24 A. Correct.

25 Q. And Mrs.~Bejaoui provided a lot more information about the

C8EAABEJH

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1 deportation aspect, right?

2 A. I don't know about "a lot more" but she conveyed the  
3 immigration problem he had, yes.

4 Q. Well, I mean any detail comes from her and not from the  
5 government, right, from --

6 A. I don't know the level of detail that Ms. Kovner gave Dr.  
7 Herbel.

8 Q. Well, in the report it says she was under the impression he  
9 might be very fearful of deportation. That's it. Okay. Then  
10 you have in the other one we -- actually, you went over that  
11 before. I don't want to waste time going over it again but  
12 this is about a pending immigration case and lot more, a few  
13 sentences and half a paragraph more from Ms. Bejaoui herself,  
14 right?

15 A. I don't know.

16 Q. Look at page four.

17 A. Thanks. There's a few sentences that she provides about  
18 the deportation, yes.

19 Q. Including that he has a pending immigration case already,  
20 right?

21 A. Yeah, I believe so.

22 Q. And doesn't have a green card?

23 A. That's right. She --

24 Q. This you learned from his wife, right?

25 A. Correct.

C8EAABEJH

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1 Q. The woman who is supposed to be coached to assist him,  
2 right?

3 A. Correct.

4 Q. And you know that -- well, do you know that you don't have  
5 to be convicted of a crime to be deported, right?

6 A. I don't know the legalities of that in terms of the  
7 frequency. I hesitate to answer that.

8 Q. In fact, he could be deported based on the immigration case  
9 he's got right now without a green card, right?

10 A. I don't know.

11 Q. Did you check that out to see whether there was any real  
12 secondary gain in him persisting with feigning, as you say, and  
13 possibly get additional time in a psychiatric hospital  
14 indefinitely for purposes of this?

15 MR. WILSON: Objection.

16 MR. DRATEL: Withdrawn.

17 Q. Did you do any research as to whether or not it would be a  
18 realistic second gain as to the immigration situation he  
19 already faces as to whether avoiding a conviction would be  
20 worth it for him to persist in this conduct if it's feigned?

21 A. Did I do any research? No.

22 Q. Okay. You just assumed that the deportation was an issue  
23 for him?

24 A. I assumed based on her comments and what the government  
25 said that it would be an issue, again, his perceptions is

C8EAABEJH

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1 what's important, not the reality of the legal technicalities.

2 But, yes, I accepted both of those things as accurate.

3 Q. You think that him being declared incompetent to stand  
4 trial and spending trial in a variety of psychiatric facilities  
5 in a wheelchair the way he is now would somehow help his  
6 immigration case?

7 A. That's not what I said.

8 THE COURT: Let's move on. I understand what you  
9 are --

10 THE WITNESS: No, I don't.

11 THE COURT: Move on.

12 Q. Before on direct you talked about you didn't put a  
13 percentage terms but you put it in terms of adjective that you  
14 were in a high level of very confident in your diagnosis of  
15 malingering, right?

16 A. Correct.

17 Q. In light of the diagnosis and really multiple diagnosis at  
18 MCC of a major depression after he spent nine months there, in  
19 light of the diagnosis at MDC that he suffered from a major  
20 depression and panic disorder and after spending four months  
21 there, the diagnosis at Devens which concurred with major  
22 depressive disorder after he spent seven months there, what's  
23 your level of confidence that he does not suffer from a major  
24 depression with psychotic features or major depression?

25 A. I am still very confident.

C8EAABEJH

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1 Q. Despite all of that?

2 A. Yes. And I can explain if you'd like but, yes.

3 Q. No, that's fine.

4 MR. DRATEL: No further questions.

5 THE COURT: All right. Thank you. Anything on  
6 redirect?

7 MR. WILSON: Yes, your Honor. Hopefully, relatively  
8 brief.

9 REDIRECT EXAMINATION

10 BY MR. WILSON:

11 Q. Dr. Cochrane, let me start here. You were asked some  
12 questions about how many times you interviewed the defendant,  
13 correct?

14 A. That's right.

15 Q. And you testified that there were four times when you  
16 conducted full interviews, is that correct?

17 A. Yes, that sounds right.

18 Q. And one time when you were part of a treatment team meeting  
19 with him?

20 A. Yes.

21 Q. Were there any other times you attempted to interview him?

22 A. Four other times.

23 Q. Now, do you work with any other people in Butner in the  
24 course of an evaluation who will interview a subject?

25 A. Yes.



C8EAABEJH

Dr. Cochrane - Redirect

1 Q. Who would that be?

2 A. The primary person would be Dr. Herbel. Other people  
3 interview him as well, not for the direct issues related to  
4 this case but Dr. Herbel would have had a number of the  
5 contacts with him.

6 Q. Just because I'm not sure that it's really been made clear,  
7 what is the working relationship between yourself and Dr.  
8 Herbel in the evaluation?

9 A. We work in tandem on all evaluations. One of us will be  
10 assigned as cases come will be assigned as the primary point  
11 person while the other one serves as a consultant. So we'll  
12 frequently be talking about the case, adding our different  
13 expertises to the case to reach a diagnostic conclusion. The  
14 primary person is typically responsible for reaching the  
15 opinion on the legal matter on the legal issue since they're  
16 the one who reviews all the documents and gathers all the  
17 information.

18 Q. Is Dr. Herbel in agreement with your conclusions in this  
19 case?

20 A. He does not have an opinion on competency cause he didn't  
21 look into that issue. But we do have an agreement on the  
22 diagnoses and, yes, he is in full agreement.

23 Q. That would be the malingering and the adjustment disorder?

24 A. And histrionic analysis.

25 Q. Do you know how many times Dr. Herbel interviewed the

C8EAABEJH

Dr. Cochrane - Redirect

1 defendant?

2 A. I believe there were thirteen notes. There are a couple of  
3 those, maybe two, three, maybe four, somewhere. A few of them  
4 I know he refused to see them as well but he interviewed them a  
5 number of other times.

6 Q. You testified that some other people had at least meetings  
7 with him. About how many times did that take place?

8 A. Oh, I know the social worker would have met with him once.  
9 The physical therapist met with him. The nurses to do -- they  
10 have to have brief interviews or contacts with him. There  
11 might be some others that I just don't recall but a number of  
12 people.

13 Q. And did Dr. Herbel tell you what happened in all the  
14 interviews he did?

15 A. Pardon me? Yeah. Yeah. He conveyed to me and I read his  
16 notes.

17 Q. And did you receive reports from any of other people who  
18 had interviewed him about what happened in those interviews?

19 A. I believe like the physical therapist and I believe I  
20 skimmed or reviewed the social workers' assessment or notes and  
21 the physical therapists. Let's see I reviewed the whole  
22 medical records. So anyone who would have made a contact in  
23 there I read their -- the laboratory and things like that.

24 Q. Did you rely on that information in reaching your  
25 diagnosis?

C8EAABEJH

Dr. Cochrane - Redirect

1 A. Yeah. I relied on all of them.

2 Q. Now, there's a question early to touch on the sleep  
3 problems that defendant reported. So just to be clear, the  
4 defendant said he had trouble sleeping, was unable to sleep?

5 A. He reported that, yes.

6 Q. Is that true, according to observations made by your staff?

7 THE COURT: You've already testified that the staff  
8 didn't observe he had difficulty sleeping, correct?

9 THE WITNESS: Yes.

10 Q. Did you draw any conclusion from that?

11 A. Well, it was inconsistent. Now, sometimes people do have a  
12 misunderstanding or miscalculate how much they sleep. In fact,  
13 there's some studies that show that people consistently  
14 underestimate how much sleep they get. So some of it could be  
15 that, mind you. But he is just miscalculating how much he  
16 sleeps and some of it could be, again, you know I am really  
17 impaired. I can't sleep. Look at all these medicines I am on.  
18 In the context of that you could interpret it as an  
19 inconsistency for the reasons I stated before.

20 Q. Could you look at Government Exhibit 9 in front of you and  
21 that's a transcript of a call from February 7 at 10:16 between  
22 the defendant and someone named Joseph.

23 A. Yes.

24 Q. I think best, perhaps, if you could start at 219 and just  
25 skim down through 327. This was played very early on

C8EAABEJH

Dr. Cochrane - Redirect

1 yesterday. You recall it? No need to read it.

2 A. I do recall it, yeah.

3 Q. Then looking at 27 on page three, line 27, the defendant  
4 states: Thank you so much. Something unintelligible, will  
5 wait to receive the lectures.

6 Do you understand what he is saying there in the  
7 context of the call?

8 THE COURT: Where are you, sir?

9 MR. WILSON: I'm sorry. Line three, page three, line  
10 27.

11 THE COURT: What exhibit?

12 MR. WILSON: Government Exhibit 9.

13 THE COURT: Government 9, page three, line 27, all  
14 right.

15 THE WITNESS: And I do understand what he means by  
16 "lectures"?

17 Q. Yes. When he says he'll wait to receive the lectures based  
18 on call do you have an understanding what that means?

19 A. I'm not exactly sure what lectures, what the application is  
20 all about. What I take this to mean --

21 MR. DRATEL: Objection.

22 THE COURT: He says he doesn't know what -- he doesn't  
23 fully understand. Go ahead.

24 THE WITNESS: I don't fully understand it but it  
25 appears that Mr. Bejaoui is requesting an application and

C8EAABEJH

Dr. Cochrane - Redirect

1 there's some lectures or things that he probably has to review  
2 as part of the application process for assistance of this  
3 organization.

4 BY MR. WILSON:

5 Q. He is receiving lectures from some organization while at  
6 Butner?

7 MR. DRATEL: Objection.

8 THE COURT: L I understand the objection.

9 You don't know that, right?

10 THE WITNESS: No.

11 THE COURT: You don't know if there actually are  
12 lectures?

13 THE WITNESS: No.

14 THE COURT: All right.

15 BY MR. WILSON:

16 Q. Let me ask you this. The defense counsel if asked you  
17 asked you a number of questions about whether Mr. Bejaoui had  
18 any interests while at Butner?

19 A. Yes.

20 Q. If assuming that were true the defendant was applying for  
21 and receiving lectures that would be interests, right?

22 A. That would be, I would consider an interest.

23 Q. Overall looking at the big picture again, can the  
24 defendant's symptoms that he represented throughout his time at  
25 Butner be explained by major depressive disorder?

C8EAABEJH

Dr. Cochrane - Redirect

1 A. I don't believe so on that.

2 Q. You also got some questions about a factitious disorder.

3 Just to be clear, why didn't you rule out factitious disorder  
4 in this case?

5 A. Because people with factitious disorder they want to assume  
6 the sick role and they'll make themselves sick, and what not,  
7 to gain the attention of doctors and be, and certainly some  
8 elements that suggest that that could be the case. However,  
9 the number of inconsistencies in his reported medical history,  
10 having cancer, making things up about going out to do hospital  
11 well work, it just didn't fit with the pattern that you  
12 typically see with factitious disorder. So, again, while there  
13 are some elements that could arguably be made, I don't believe  
14 it's consistent with that condition, that's why I ruled that  
15 out.

16 Q. Assuming that he did have fictitious disorder would that  
17 render him incompetent to stand trial?

18 A. Whether he had somatoform disorder, factitious disorder or  
19 malingering, no, I wouldn't expect any of those conditions to  
20 have any impact on his competence.

21 Q. Why is that?

22 A. Well, because the people are, generally, it's about medical  
23 issues, not legal matters that they're focused on. I guess,  
24 let me put one exception. If someone had a pain disorder for  
25 example and were so preoccupied with that, which he doesn't

C8EAABEJH

Dr. Cochrane - Redirect

1 have in this case as everyone agrees but then I suppose you  
2 might be -- there's a theoretical possibility they would be  
3 preoccupied during proceedings with that pain and wouldn't  
4 focus on what's going on in court. Aside from that though I  
5 don't see the connection between these conditions and this  
6 desire to report whether it's unconscious or conscious  
7 inaccurate medical information as relating to a person's  
8 competence to stand trial.

9 Q. Do you still have Defense Exhibit E in front of you? It  
10 would be in the binder.

11 A. "E" is in "echo".

12 THE COURT: The Lutheran Medical Center.

13 THE WITNESS: I think I have it. It's not labeled  
14 but --

15 Q. Could you just look at the second page of that document?

16 A. The Lutheran Medical Center, right?

17 Q. Yes.

18 A. All right.

19 Q. That's the one that down at the bottom describes the last  
20 visit, that page?

21 A. Second.

22 Q. Thank you very much.

23 A. Sorry.

24 Q. Says requests for additional data at the top?

25 A. That's the first page for me. Sorry.

C8EAABEJH

Dr. Cochrane - Redirect

1 THE COURT: The last entry on that page and read it to  
2 yourself.

3 Next question?

4 BY MR. WILSON:

5 Q. Does that entry indicate that the defendant was  
6 hospitalized for six days at Lutheran Hospital at that time?

7 A. It doesn't specify that, no.

8 Q. Says the visit was between those periods, is that correct?

9 A. Correct.

10 Q. Based on your knowledge, if you have any, about how  
11 hospitals work, is it possible that that is just a period of  
12 time that their records reflect a visit?

13 MR. DRATEL: I am going to object, your Honor. This  
14 hospital, particular, hospital in Brooklyn whether he as any  
15 idea.

16 THE WITNESS: Well, he may. I don't know any  
17 particular hospital.

18 THE COURT: All right.

19 Q. Is that possible?

20 A. Is what possible?

21 Q. Well, defense counsel asked, asserted in a question that he  
22 had spent six days in the hospital.

23 THE COURT: Do you have any knowledge of hospital  
24 record keeping?

25 THE WITNESS: Not other than when we request records



C8EAABEJH

Dr. Cochrane - Redirect

1 on a regular basis and I get them and sometimes we contact  
2 people that send things. I have a working understanding but  
3 not a detailed understanding.

4 MR. WILSON: I'll move on, your Honor.

5 THE COURT: All right.

6 Q. Defendant asked you some questions about an incident that  
7 we discussed also on direct where the defendant had refused to  
8 take drugs for a period of time and then he greed to take them  
9 again. Do you remember that?

10 A. Yes, I remember that exchange.

11 Q. And the defendant suggested that one explanation for this  
12 was that the defendant had been -- withdrawn.

13 Defense counsel suggested that an explanation was that  
14 the defendant had been told that not taking these drugs would  
15 be dangerous. Do you remember that?

16 A. Yes, I remember it.

17 Q. Would it be consistent with loric paranoia of the type the  
18 defendant represents to be showing to trust the hospital  
19 staff's statement about what drugs are dangerous and take it on  
20 that basis?

21 A. If they're loricly paranoid that people are trying to kill  
22 you at our facility that would seem unusual.

23 Q. Just to be clear on one other point, if you look at page 21  
24 of your report there is a question about what you said about  
25 what's in the calls that you reviewed. If you look at the very

C8EAABEJH

Dr. Cochrane - Redirect

1 bottom of 21 and just read that first sentence of that bottom  
2 paragraph to yourself, did you indicate in your report how many  
3 of the calls you reviewed?

4 A. No, I just said several.

5 Q. That's the answer. Now, let's talk about this incident  
6 where the defendant complained of being beaten by a hospital  
7 staff. Do you know what incident he is referring to?

8 A. I do.

9 Q. Is that an actual incident that took place at the hospital  
10 of some kind?

11 A. It's an incident of some kind, yes.

12 Q. Do you remember what happened in that incident?

13 A. I was not there. I read the notes about it.

14 Q. Based on your review of the notes, the hospital records?

15 A. Yes.

16 Q. What happened in that incident?

17 MR. DRATEL: I am going to object to the form of the  
18 question.

19 THE COURT: What do the notes reflect occurred on that  
20 day?

21 MR. WILSON: Your Honor, let me show Government  
22 Exhibit 45 and maybe that will make this much easier.

23 (Pause)

24 Q. Take a minute to review it and let me know when you are  
25 finished.

C8EAABEJH

Dr. Cochrane - Redirect

1 (Pause)

2 A. Okay.

3 Q. What is this document?

4 A. This is one of the few notes, not all of them but one of a  
5 few notes about that incident and documented by Nurse Collins,  
6 one of the regular nurses on his unit.

7 Q. What does it indicate happened on this occasion?

8 A. It indicates that Mr. Bejaoui became very upset with the  
9 officer who is telling him he needed to take a shower. He then  
10 put up his hands towards the officer and she indicates was  
11 taunting him and tried to swing at the officer, fell out of his  
12 wheelchair. That's when assistance was called to the unit.  
13 Other officers and maybe nurses too who were, there several  
14 nurses on the unit, responded and tried to get him to stand up  
15 and that she noted that he stiffened his legs in resistance  
16 trying to avoid being placed back in the wheelchair.

17 Q. And says he was taken to the 1E unit?

18 A. I am sorry. He was then take to the 1E unit which is a  
19 more secure unit.

20 Q. And that's consistent with what he indicates in the call  
21 about being taken to the secure unit?

22 A. Yes, that's true.

23 Q. So why do you believe that Mr. Bejaoui tells this story  
24 that he tells to his wife about this incident?

25 A. He tells it in very dramatic fashion on many occasions he

C8EAABEJH

Dr. Cochrane - Redirect

1 tells what on the surface seems like very convincing stories.  
2 In fact, if you just read it you would think there was blood  
3 every where and people were beating him up when, in fact, none  
4 of that happened. He was never struck by an officer and, in  
5 fact, he did have some abrasions and a bruise on, I think, one  
6 of his temples maybe from falling out of the chair. He was  
7 immediately assessed by the physician assistant and there was  
8 no bleeding, whatsoever. So his account, he is accurate about  
9 the gist but the details I think were self-serving  
10 solicitations for sympathy in my opinion.

11 Q. Would that kind of exaggeration of actual incidents is the  
12 type of thing you would expect to see in someone who's  
13 delusional or paranoid?

14 A. I am sorry. Could you rephrase it?

15 Q. In someone who's having paranoid delusions, would you  
16 expect to see this type of exaggeration of an actual incident?  
17 Is this consistent in your view?

18 A. Not in this dramatic particular sort of fashion. Now, you  
19 do have people who are paranoid who will distort things that  
20 have occurred but not -- again, if you look at the whole  
21 presentation and all of the distortions it seemed strikingly  
22 unusual for a paranoid person. What paranoid people do  
23 sometimes distort elements of things.

24 Q. Let me ask you this. Would a paranoid person misreport or  
25 misremember whether there's blood all over the room in this

C8EAABEJH

Dr. Cochrane - Redirect

1 type of incident?

2 A. No. I can't imagine that.

3 Q. I want to point you to Government Exhibit 24 which is the  
4 call that we heard about this particular incident. And look at  
5 page five, starting at line 23 and --

6 MR. DRATEL: What's the date?

7 MR. WILSON: March 19 at 11:15 a.m. a call between  
8 Mr. Bejaoui and his wife.

9 MR. DRATEL: I thought that was 27.

10 MR. WILSON: 24.

11 THE WITNESS: What line?

12 Q. Page five, line 23 and if you would read down to three on  
13 line six.

14 (Pause)

15 A. I am sorry. What line again?

16 Q. Very top of six through line --

17 A. I am there.

18 Q. Looking back at the very beginning of what I asked you to  
19 read, defendant refers to -- the defendant's wife refers to  
20 talking to her and telling her things, right?

21 A. Correct.

22 Q. Now, based on the context of this call "her" would be his  
23 counsel, Ms. Lewis, correct?

24 A. I believe is it Lindsey.

25 Q. Yes.

C8EAABEJH

Dr. Cochrane - Redirect

1 A. That is the name I remember this person by.

2 Q. Now, starting at line 30 Mr. Bejaoui in substance tells his  
3 wife that, yes, tell her about this, "her" being Lindsey or  
4 Ms. Lewis. Tell them to come see, right?

5 A. Yes.

6 Q. And then down on 38 he says tell her, tell her go and see  
7 him. Fair to assume that "him" would be Mr. Dratel?

8 A. That would be my assumption. I don't know.

9 Q. Does that suggest to you that the defendant has some sort  
10 of fear or mistrust of Mr. Dratel and Ms. Lewis based on mental  
11 illness?

12 A. Not some kind of paranoid fear.

13 Q. Does it indicate he is seeking their assistance?

14 A. It does seem to suggest that, yes.

15 Q. Now, if you go to page 7 and just refer me from -- well,  
16 let's say, let's start just line 18. I'll read it to you. It  
17 is his wife speaking. Says, yeah, the thing is when you  
18 decided to plead what you pled, and then there was a pause,  
19 when you decided to let them know you wasn't stable and this  
20 and that you should have known they were going to put you  
21 through this. Does that indicate to you that the defendant's  
22 wife thinks that he is making a decision to act unstable?

23 MR. DRATEL: Objection.

24 THE COURT: I'll allow it.

25 THE WITNESS: Say again. Does it mean?

C8EAABEJH

Dr. Cochrane - Redirect

1 Q. Does it indicate to you that his wife believes that this is  
2 a decision he is making to act unstable?

3 A. Well, she seems to believe that it was a decision on his  
4 part to let them know he was unstable as she states.

5 Q. Okay. And just to confirm on line 7, line 27 of page 7,  
6 again, she says when you decided to plead you know what you  
7 did. Again, that indicates that there is an element of  
8 volition in what he is doing, right?

9 A. It indicates that she believes it was an element of  
10 volition.

11 MR. DRATEL: Objection, your Honor.

12 THE COURT: I will allow it but it's what she believed  
13 according to this witness.

14 MR. DRATEL: Right.

15 THE COURT: His belief as to what she believed.

16 MR. DRATEL: Right. Based on that statement.

17 BY MR. WILSON:

18 Q. And she then suggests in this statement that he change his  
19 plea as she puts it, correct?

20 A. Yes.

21 Q. Does that suggest to you that his wife is under the  
22 impression that he is incapable of changing his plea?

23 MR. DRATEL: I am going to object, your Honor.

24 THE COURT: Let's move on.

25 Q. If you turn to Dr. Channel's report which I think is

C8EAABEJH

Dr. Cochrane - Redirect

1 Defense Exhibit C, a few questions since you were asked  
2 about --

3 MR. DRATEL: Your Honor, could we just -- there's a  
4 scheduling issue with Dr. First. He has to leave about four  
5 something. I just want to know where we are.

6 THE COURT: All right. Let's hear.

7 MR. WILSON: I literally -- I have a few matters to  
8 point to, your Honor, then I am done.

9 THE COURT: Let's move on.

10 MR. WILSON: If you would turn to page 11 of the  
11 Channel report and look to the fourth full paragraph.

12 THE WITNESS: Yes.

13 Q. Just look at those first two sentences.

14 A. Yes.

15 Q. All right. I'll even read a portion here.

16 THE COURT: Just a moment. You want to find it?  
17 That's Devens, right?

18 MR. WILSON: Devens report, Defense C.

19 THE COURT: I have it. What page?

20 MR. WILSON: Sorry. Page 11 and it is the fourth full  
21 paragraph.

22 THE COURT: Yes.

23 Q. Why don't you read just those first full sentence. Read  
24 them aloud.

25 A. While Mr. Bejaoui has been given a diagnosis of major



C8EAABEJH

Dr. Cochrane - Redirect

1 depressive disorder providing an accurate diagnose for the  
2 defendant is compromised by his lack of cooperation and the  
3 fact he is a very poor historian. Whether his inconsistent  
4 self-report is a result of deliberate deceit or due to overall  
5 disorganized thinking is unclear, however, it is clear his  
6 self-report is not reliable.

7 Q. So Dr. Channel was not sure that the defendant was not  
8 being deliberately deceptive at the time of his report?

9 A. Correct.

10 Q. If you look down to the next paragraph and you can read the  
11 first sentence aloud.

12 A. While at MCC New York clinicians had significant concerns  
13 about the legitimacy of Mr. Bejaoui's presentation based on  
14 rapid onset of his physical problems, his general refusal to  
15 participate in evaluations and the observation of his him  
16 behaving inconsistently over time. Continue?

17 Q. Yes.

18 A. Given concerns about the legitimacy of some of  
19 Mr. Bejaoui's reported symptoms especially as they apply to his  
20 report of chronic pain, two differential diagnoses should be  
21 ruled out.

22 Q. So that indicates that both Dr. Channel at Devens and the  
23 doctors at MCC still had concerns about whether the defendant  
24 was malingering?

25 A. Yes, it appears so, yes.

C8EAABEJH

Dr. Cochrane - Redirect

1 Q. Turn to the next page of the diagnosis. All malingering is  
2 listed under Access One. What does that mean?

3 A. "Rule out". The condition still needs to be ruled out.

4 Q. What does it mean that the condition still needs --

5 A. I'm sorry. That more information is needed to determine  
6 whether or not that particular condition is present.

7 Q. And in the prognosis and recommendation section which is  
8 just below the second to last line states it is also  
9 recommended he be evaluated further to rule out the  
10 differential diagnoses noted above. That means to rule out  
11 malingering?

12 A. Yes that's precisely what that means.

13 Q. Did Dr. Channel in preparing his report review the  
14 defendant's prison calls?

15 A. I don't believe so. Let me check. No, he did not.

16 Q. And do you know whether Dr. Channel still has the same  
17 opinion in light of the new information contained in your  
18 report in the prison calls in Dr. First's report?

19 A. I have no idea.

20 MR. WILSON: No further questions, your Honor.

21 MR. DRATEL: Just a couple, your Honor.

22 THE COURT: Go ahead.

23 RECROSS EXAMINATION

24 BY MR. DRATEL:

25 Q. In fact you wrote your report before you heard most of the

C8EAABEJH

Dr. Cochrane - Recross

1 calls?

2 A. I did not write the report until after I reviewed all the  
3 calls.

4 Q. Oh, so you reviewed all the calls and you still wrote that  
5 they were clear, coherent and -- didn't you just say before you  
6 when you wrote the report you didn't listen to all the calls?

7 A. Let me before be clear. All the calls, meaning all the  
8 calls I listen to I listen to them all before writing my  
9 report.

10 Q. All the cause that are in existence that we have transfers  
11 for, did you listen to all of them before you wrote the report?

12 A. I did not.

13 Q. So just like Dr. Channel. In fact, you -- it says for  
14 further evaluation more information is needed to rule out,  
15 right?

16 A. According to Dr. Channel's report?

17 Q. Yeah. And you ruled it out the first day you met Mr.  
18 Bejaoui?

19 A. I did not do that.

20 Q. You said he is feigning psychosis, right?

21 A. I'm sorry?

22 Q. Dr. Herbel said you said --

23 A. That's how Dr. Herbel characterized it, yes.

24 Q. In fact, you told us before this afternoon on cross even  
25 before you met Mr. Bejaoui you thought he was contrived because

C8EAABEJH

Dr. Cochrane - Recross

1 you read it in a report before you even met him?

2 MR. WILSON: Objection.

3 THE WITNESS: I did not say it like that.

4 Q. You didn't say that the contrive was something that you  
5 concluded before you ever met him just from reading the report?

6 MR. WILSON: Objection to vagueness. Can he define  
7 the contrived?

8 MR. DRATEL: The contrived voices.

9 THE WITNESS: I suspected and I was developing  
10 hypothesis as we all do before someone even enters our facility  
11 and I suspected based on that comment that that may have been  
12 contrived.

13 Q. You confirm him the first day you met him?

14 A. I did not.

15 THE COURT: All right. Thank you. All right. You  
16 may step down, your Honor.

17 I take it this is the only witness for the government,  
18 correct?

19 MR. WILSON: Yes, your Honor.

20 THE COURT: All right.

21 MR. WILSON: One thing I would just like to proffer  
22 given that it's come up. The government did not call Dr.  
23 Channel today because we felt his testimony would be largely  
24 duplicative. I have spoken to him. He has reviewed the first  
25 report. He has reviewed Dr. Cochrane's report. He has now

C8EAABEJH

Dr. Cochrane - Recross

1 reviewed the prison calls. He now concurs in Dr. Cochrane's  
2 view that this is malingering and would say the defendant is  
3 incompetent. If that is something that your Honor finds  
4 relevant or interesting, we're happy to bring him down in the  
5 future.

6 THE COURT: You are saying he would be duplicative of  
7 what Dr. Cochrane has said?

8 MR. WILSON: Correct.

9 THE COURT: Okay.

10 MR. WILSON: I just don't want to leave a  
11 misimpression that Dr. Channel who has now reviewed all this  
12 still believes the defendant is incompetent because he does  
13 not.

14 MR. DRATEL: Well, your Honor, I object to that. I'll  
15 make my own report about why I didn't call Jean Barrett. I am  
16 not going to start waiving the privilege.

17 THE COURT: Just a moment. I think the appropriate  
18 response for me, sir, is you can call him or not as you see  
19 fit. I understand your position is that it would be largely  
20 duplicative but you don't want me to have the impression that  
21 he is maintaining his position. I understand that. I am not  
22 sure how it could be largely duplicative if he is not. Oh,  
23 it's duplicative. He has changed his position and therefore  
24 he'd be saying essentially the same thing as Dr. Cochrane.

25 MR. WILSON: He would just concur with Dr. Cochrane's

C8EAABEJH

Dr. Cochrane - Recross

1 diagnosis.

2 THE COURT: It's up to you as to whether you want to  
3 call him. I understand what you've said.

4 MR. WILSON: Thank you.

5 THE COURT: You rest?

6 MR. WILSON: Oh, I think in theory the defense is  
7 still up since --

8 THE COURT: Defense case is still up but you had one  
9 witness. That witness is now --

10 MR. WILSON: And we would rest, yes.

11 THE COURT: All right. Fine. And I take it given  
12 what you just said, sir, that your only witness is Dr. First?

13 MR. DRATEL: Correct.

14 THE COURT: And for some reason you wanted to put on  
15 the record why you are not calling somebody else. I don't  
16 think that's necessary.

17 MR. DRATEL: No, it is not. If we are going to start  
18 proffering things that are not -- that we can all --

19 THE COURT: Everybody decides, each side decides who  
20 they want to call. The government has decided to call Dr.  
21 Cochrane. They called him. You, apparently, have decided to  
22 call only Dr. First. You have called him. Okay.

23 MR. DRATEL: I just was reacting to the notion that  
24 you can say why you call someone but he would have helped us  
25 anyway.

C8EAABEJH

Dr. Cochrane - Recross

1 THE COURT: Okay.

2 MR. DRATEL: She would have helped us too, your Honor.

3 THE COURT: Okay. Dr. First, I have some questions  
4 for you, sir, okay. We can go through the formalities if you  
5 want to take the stand. That's up to you. It's probably  
6 easiest to take the stand. Formalities are worthwhile. You  
7 remain under oath you understand.

8 DR. MICHAEL B. FIRST,

9 called as a witness by the The Court,

10 having been duly sworn, testified as follows:

11 DIRECT EXAMINATION

12 BY THE COURT:

13 Q. Some of these phone calls sure sound like coaching to me,  
14 sir. You know, Maria, the man, the woman, you know and this is  
15 what you ought to be saying and she said do you understand and  
16 she says no. So it even makes it more explicit. What's your  
17 reaction to those coaching, what I characterize as coaching  
18 phone calls? You can tell me they're not.

19 THE WITNESS: I don't know what they are exactly. I  
20 have to admit when I actually listen to the tapes without the  
21 benefit of a transcript I played those two, three calls three  
22 or four times. I have no idea what he is talking about so.

23 THE COURT: Well, if the man is Dratel and the woman  
24 is Lindsey then they make sense.

25 THE WITNESS: I thought the man is -- I thought was

C8EAABEJH

Dr. First

1 trying to refer to him and his wife in the third person, no.

2 THE COURT: Oh, all right. I am sorry. That may be  
3 another one, yes, yes.

4 THE WITNESS: I am not a hundred percent sure when you  
5 go over it.

6 THE COURT: Sometimes he is talking about Dratel.  
7 Other times the man is the defendant and the woman is Maria.

8 THE WITNESS: Apparently, the claim is that's the  
9 coaching that somehow he is now talking in the third person is  
10 a way of communicating information. And what's notable is the  
11 information he's communicating, A, as if it was pointed out  
12 during -- if he did attempt to coach her she didn't even  
13 understand it or wasn't clear coaching because she didn't in  
14 fact in -- apparently, if it, in fact, was coaching, the  
15 motivation, it did occur right before the phone call with Dr.  
16 Herbel. That very clear, in the context of Herbel tried to  
17 call her. She's put off the call, said she was busy and that  
18 he clearly arranged the call, making the call again. He said  
19 he's going to call me at 9:30. So it looks like this entire  
20 thing had something to do, specifically, about her reaction  
21 with Herbel. So all we know after this interchange was there's  
22 no evidence that any of that supposed coaching showed up in the  
23 actual interview with Herbel. So it's --

24 THE COURT: Her interview with Herbel?

25 THE WITNESS: Yes. It looks like this claim appears



C8EAABEJH

Dr. First

1 to be that she was being coached, specifically, about the  
2 interview with Dr. Herbel. And, in fact, as was pointed out  
3 during the previous testimony that none of the information,  
4 none of the information that he elicited from her contained any  
5 of the information that supposedly she was coached to say.

6 THE COURT: But whether the coaching was effective or  
7 not --

8 THE WITNESS: -- understand whether it was actually  
9 coaching. We are assuming that that's what -- I don't know  
10 what that still means.

11 THE COURT: Let's go here. I'll read you Government  
12 Exhibit 12, he' talking to her. I'll tell you. I'll tell you.  
13 The point is the lady she gets the phone call Monday, thinks  
14 she can tell you, you know her husband that's the defendant  
15 that she doesn't understand the defendant any more. You  
16 understand? Handwriting is different. Things are very  
17 different. And then I think in this later one the handwriting  
18 is very different, talking about the handwriting there. You  
19 follow me? She doesn't because he's being obscure. You've got  
20 to follow me. The lady, she's going to have a phone call  
21 Monday. You forget that's Herbel. The witness: Yes. She  
22 still didn't get it. Who? Who are you talking about? The  
23 defendant: The lady, you know, they're going to call her.  
24 They are going to ask her what's going on. Then Maria gets it.  
25 Yeah, the people that's supposed to call me, right. Right.

C8EAABEJH

Dr. First

1 Then he continues, oh, okay. Okay. He continues the coaching.  
2 Letters you don't understand any more. He's dropping a little  
3 of the pretense cause he is having trouble getting through to  
4 her what he means. Writing the letters, the handwriting is  
5 different. The things he doesn't want to speak about on Rikers  
6 because it must be very hard for him. And I am not reading  
7 everything because he doesn't want to disclose. It makes him  
8 cry and stuff like that. What else you have noticed? I mean  
9 what else she have noticed? Paranoid, talking about killing  
10 and stuff like that, afraid, the things they've done. He is  
11 giving her a script. Whether or not she gets it is a separate  
12 issue. God knows what they've done to him on Rikers. Rikers  
13 is dangerous.

14 THE WITNESS: I guess I understand it. I think  
15 whether it was effective enough, he is clearly communicating to  
16 her what he want her to say.

17 THE COURT: Or he is trying to in a rational,  
18 dispassionate method that that, apparently, has nothing to do  
19 with the paranoia and has everything to do with purposeful  
20 attempt to be declared incompetent.

21 THE WITNESS: Much of the information, the thing about  
22 the Rikers is an interesting example. What he seems to be  
23 communicating to her is one way to look at it he's communicate  
24 to her to say -- cause he also says later on in the phone call  
25 before to tell the truth. A couple of times he says that

C8EAABEJH

Dr. First

1 directly.

2 THE COURT: Any witness whenever I've heard  
3 transcripts you'd be very surprised -- maybe you wouldn't be --  
4 of what people say who are inmate at MCC after they've read the  
5 big notice that says "every call is monitored" and in other  
6 cases -- I am not suggesting this case is -- they say get out  
7 of town. The government's going to subpoena you. Torch the  
8 car and there's the sign. So that part of it doesn't surprise  
9 me at all. So we're still dealing --

10 THE WITNESS: I guess ultimately I don't know what was  
11 going on in his mind and I agree it does sound like he is  
12 trying to make sure that she is consistent -- the records --  
13 his fear of what happened in to him at Rikers because we don't  
14 know exactly what happened. He appears to be claiming to have  
15 been sexually assaulted at Rikers. He is very shameful. He's  
16 told her that many, many times.

17 THE COURT: Right. And he's cried.

18 THE WITNESS: It appears at this point he is reminding  
19 her that that's something that's important and he is sort of  
20 coaching her to say things that he's been saying all along that  
21 sounds completely truthful. It's not -- it doesn't sound like  
22 the --

23 THE COURT: But he is telling her things that are not  
24 truthful. You don't understand the letters any more. The  
25 writing is different. We have no reason to think that is true.

C8EAABEJH

Dr. First

1 THE WITNESS: Well, that's true.

2 THE COURT: Is there any -- can you give any  
3 explanation? I mean you gained some credibility by saying some  
4 other things to me but at some point the number of inexplicable  
5 things mean maybe the hypothesis has to be rethought.

6 THE WITNESS: I guess my opinion and I guess, I think  
7 he exaggerates and is manipulative and also psychotic. I think  
8 there's a mix as many, many patients who are mentally ill also  
9 are, I believe he is manipulative, conniving person who is also  
10 mentally ill. Part of the problem with that phone call -- and  
11 there's no question that huge inconsistencies in this  
12 cognitive -- when you asked him cognitive questions when he  
13 says he doesn't know the date when he, obviously, does, I think  
14 that a lot of the material that came out during the discussions  
15 shows that his -- the difference between the -- you ask him  
16 like the Georgia test, you asked him lots of questions and he  
17 acted like he didn't know. And I agree, in his head it appears  
18 that he must know because of some of the things he said to --  
19 about the legal system is completely inconsistent with the way  
20 he came across during the exam. I agree with that. And I  
21 think that -- but mixed in it with that I believe there is a  
22 true dysfunctional paranoia and depression. I, actually, when  
23 I heard that phone call that was played in court it sounds in  
24 distress and the desperation and the --

25 THE COURT: Which one? The most recent one where he

C8EAABEJH

Dr. First

1 is talking about the assault?

2 THE WITNESS: The whole assault. Even though the  
3 story is totally distorted, perhaps, he is playing up the facts  
4 but the level of distress and fear would sound completely real  
5 to me.

6 THE COURT: But that goes and, again, I am playing  
7 nice here because I am a lawyer, not a doctor but that sounds  
8 like an aspect of histrionic personality and not something  
9 that's disqualifying in terms of competence.

10 THE WITNESS: No. The aspect of the competency is the  
11 ability to work with his attorneys. I think it -- I think I  
12 made that point yesterday at the end of my testimony, that the  
13 point of it, the issue about being aware of his surroundings  
14 and being aware of the legal system, that part seems  
15 questionable with the idea that he really does it.

16 THE COURT: It's questionable that he doesn't.

17 THE WITNESS: I agree. I do -- I happen to believe  
18 that the aspect of his ability to work with his attorneys in  
19 any reasonable way, that's compromised due to his paranoia, his  
20 depression and his personality. So I think the two pieces to  
21 where the competency-wise and I think that most of the -- the  
22 things that seemed to be dissembled are on the level of  
23 cognitive impairment does seem to be intentional at some level.  
24 And the debate whether that to be taken care of or part of the  
25 problem I still have is I still don't get the secondary gain.

C8EAABEJH

Dr. First

1 There's clearly a dissembly element on cognitive side. There's  
2 absolutely no question about that.

3 And I still believe that he has a serious mental  
4 illness. And the nature of depression and psychotic features I  
5 still believe is the proper diagnosis. But on top of that the  
6 cognitive impairment aspect of the case -- I skip the two  
7 together and I think the major depressive with psychotic  
8 features are not -- not the idea.

9 THE COURT: Say that again.

10 THE WITNESS: I believe because of his severe  
11 depression which I do believe is real and his ongoing paranoid  
12 and his tendency under stress to go into paranoid delusions,  
13 that makes it -- even his reactions with his attorneys, at some  
14 point he's able to go to his attorneys for help and at other  
15 points there was a phone call that, the last phone call I  
16 listen to which we don't have a transcript of that was given to  
17 me Sunday night, the very end of the call he says that he  
18 thinks that the lawyer and I are lying to him.

19 So he becomes paranoid very quickly cause he has a  
20 paranoid core and he becomes convinced so that element of his  
21 psychopathology that's rendering incompetent, not the cognitive  
22 point.

23 What makes this case --

24 THE COURT: Just a moment. Go ahead.

25 THE WITNESS: I think what has made this case so

C8EAABEJH

Dr. First

1     incredibly challenging is that the confusion that if somebody's  
2     malinger about one thing, we mangle about everything. I  
3     guess that's where I think we, I and Dr. Cochrane differ in our  
4     opinions most fundamentally. I think Dr. Cochrane has come to  
5     the conclusion because he feels solid that Mr. Bejaoui's  
6     malinger about this cognitive impairment and everything that  
7     comes out of his mouth is malinger. I am saying, yes, I  
8     agree that he is feigning certain aspects of the  
9     psychopathology. In my clinical judgment I believe that the  
10    main core diagnosis, the major depression of psychotic features  
11    is real and that that's impairing his ability to be able to  
12    function and be competent.

13           THE COURT: Now, that I think allows you to fit into  
14    that framework a couple of my other questions but tell me if I  
15    am wrong. That is instructing his wife how to obtain the  
16    document from the state court to prove that the state case was  
17    dismissed, is that right? Because is that part of your  
18    position that he as malinger in terms of the cognitive  
19    impairment that he understands the functioning of the state  
20    court system and is malinger to the extent that he's not,  
21    that at other times he says he doesn't know how it works?

22           THE WITNESS: Exactly.

23           THE COURT: And that goes for sometimes seeking the  
24    help of Lindsey or Laura and Dratel and other times not even  
25    knowing their names, is that right? Fits in there, okay. And

C8EAABEJH

Dr. First

1 that also is consistent with Dr. Cochrane's position that you  
2 just don't -- I think you first ruled it an amnesiac. You  
3 don't have amnesia about things you knew. He knew his name.  
4 You just don't forget.

5 THE WITNESS: Right. That's extremely rare. I agree.  
6 And that's kind of the -- there's certain aspects of this which  
7 just so complete on the face of it just not believable like  
8 that and --

9 THE COURT: That goes for his helping his friend with  
10 the very specifics about forms 130, form 485, form 765,  
11 correct?

12 THE WITNESS: Yes.

13 THE COURT: Dr. Cochrane's position was, I think it's  
14 such he had such a poor score on the mini mental exam that he  
15 had to have be faking. I think that's his position.

16 THE WITNESS: Right. I think there's a general --  
17 there's a correlation between the theory when you talk to  
18 somebody or you listen to the tapes, you can often -- when you  
19 speak to somebody you have to guess of what MM exam has to be.  
20 Dr. Cochrane is correct that when he had a mini mental status  
21 three what can you say that is that can't possibly reflect --  
22 the word faking is another question about what's going on. But  
23 there's no question that those numbers do not reflect the  
24 actual cognitive function. That's absolutely true. He would  
25 not be functioning this way with a score that low. Basically,



C8EAABEJH

Dr. First

1 for some reason he is performing very poorly when you actually  
2 ask him these questions.

3 THE COURT: That is consistent with your view of  
4 malingering in terms of the cognitive issues.

5 THE WITNESS: Or feigning. I mean other possibility  
6 he is lying. He is dissembling. He is clearly not being  
7 honest. Is he doing it because he thinks that somehow this is  
8 going to have some secondary gain which I find hard to see or  
9 is he doing it because I like to get help? One theme that runs  
10 through the tapes and in the hospital, nobody is helping me.  
11 Everybody i's ignoring me. The doctors don't come to see me.  
12 Even though when they comes to see him he gives them a hard  
13 time. This whole issue about wanting to look ill and take care  
14 of.

15 The whole wheelchair story I think it, you know,  
16 psychologically what in God's name is the possible gain for him  
17 to be insisting to be in the wheelchair? There's some driving  
18 need to look ill and it's hard to see how -- he was going up  
19 for Social Security Disability, the wheelchair as a malingering  
20 angle would make sense. People do things like that to be bon  
21 disability. Him, he had to be carried from to the line and it  
22 was ridiculous. The gain to go from being carried to be in a  
23 wheelchair, I don't understand. Now, if he is faking it which  
24 I think is quite possible, he is pretending or exaggerating,  
25 the motivation has to be something like a desperate need in

C8EAABEJH

Dr. First

1 this very harsh, difficult setting of prison to be treating  
2 like a little kid, I guess or something like that and I think  
3 that could be generalized.

4 So I am still a little caution about the -- I agree  
5 that he is not being honest in how he performs when you do  
6 cognitive testing. That's complete clear and it's complete how  
7 he, actually, performs on the telephone calls. It's completely  
8 inconsistent with the way he performs during the evaluations.  
9 The why remains to me and that's why I think the factitious  
10 disorder comment that was or issued or floating around, that is  
11 an alternative hypothesis which to me is more consistent with  
12 the actual picture and his desperate need to be taken care of  
13 by everybody, his wife, his doctors, the hospital. I expect  
14 the question is why now? Has he always been like this? I  
15 think he's always been a needy buy but I think that being in  
16 the prison has caused him psychologically to sort of fall apart  
17 to desperately have to resort to those dramatic ploys to get  
18 taken care of to get attention. That's how I understand it.

19 THE COURT: But going back to -- that's very helpful.  
20 That's not what's making him incompetent.

21 THE WITNESS: I agree with Dr. Cochrane. His --  
22 disorder making is making him incompetent. His desire to be  
23 sick isn't making him incompetent. That's where the major  
24 depression with psychotic features which I still opine is a  
25 real condition and the paranoia, that is what's making him

C8EAABEJH

Dr. First

1 incompetent, not the cognitive stuff.

2 THE COURT: But the test is whether he's suffering  
3 from a mental disease or defect rendering him mentally  
4 incompetent and you have said, yes, it's major depressive  
5 disorder with psychotic features. That's the disease or defect  
6 that renders him incompetent but to the extent that he is  
7 unable to understand the nature and consequences of the  
8 proceedings against him or to assist properly in his defense  
9 and to the extent you've said he is faking, exaggerating,  
10 malingering in regard to the cognitive impairment, doesn't that  
11 say that he is able to assist in his defense and understands  
12 the nature and consequences of the proceedings against him.  
13 That, is -- I realize I am being as convoluted as some of the  
14 questions you got from lawyers -- if he can deal with form 130  
15 and 485 and 765 and tell his wife how to get the statement from  
16 the state courts that's been done in the state case and tell  
17 her to reach Dratel and Lindsey or Laura when he needs to,  
18 isn't that evidence that he understands the consequence of  
19 proceedings against him and can assist properly in his defense  
20 and it's the faking on the cognitive impairment that's the only  
21 thing that means he can't.

22 THE WITNESS: He, in fact, has not been assisting in  
23 his defense at all. I guess that's part of -- his interaction  
24 what the lawyers has been impossible. The lawyers have had  
25 absolutely no assistance all the way down the line.

C8EAABEJH

Dr. First

1 THE COURT: I don't doubt that but it's unable to  
2 assist just because he hasn't doesn't mean he is unable. And  
3 in fact, I am pointing to testimony here that suggests he is  
4 able, just as he could tell his friend about 130, 485 and 765  
5 presumably he could deal with Mr. Dratel and Ms. Lewis.

6 THE WITNESS: Or hasn't been able to deal with them,  
7 the specifics of anything about the insurance fraud case. I  
8 mean that's been part of the problem. They have been unable to  
9 work with him to deal with the actual charges from the very  
10 beginning.

11 THE COURT: And I am trying to understand. I'm not  
12 giving you a hard time. I'm trying to understand that but that  
13 simply suggests that he has made a conscious decision for the  
14 secondary gain which I don't understand either but it's  
15 theoretically out there in terms of immigration. I think it's  
16 a tremendously high cost to pay but it's theoretically there  
17 that he's made a conscious decision that secondary gain to act  
18 as if he is unable to assist properly in his defense.

19 THE WITNESS: Let me offer in between. I think part  
20 of the problem is that we're assuming that if it weren't for  
21 his lying he would be cognitively totally in tact. Look at all  
22 the phone calls. There are multiple times during the phone  
23 calls where he talks about things he can't remember, things he  
24 can't concentrate. When he -- clearly I think the end of that  
25 plea, how can I plea if I don't remember? I think he has some

C8EAABEJH

Dr. First

1 real cognitive impairment due to the depression. And then on  
2 top of it he has this absurd cognitive impairment when you  
3 actually try to test it and there's no way to figure out how  
4 much of the cognitive impairment is real because when you -- if  
5 we were to go do a neurocyte test on him he would probably  
6 perform at the same level he does when we do the mini mental  
7 status.

8 THE COURT: But --

9 THE WITNESS: In spite of that there is a real  
10 cognitive impairment. That's what you see on telephone calls  
11 as was pointed out, the pauses, the memory problems, how can I  
12 plead to something I don't remember? I believe that he does  
13 have depression. The depression is impairing him to truly  
14 understand and remember and appreciate the details of the case  
15 enough to be able to assist his attorneys.

16 THE COURT: So in theory if the depression can be  
17 lifted --

18 THE WITNESS: Absolutely.

19 THE COURT: -- that would take care of that but it  
20 doesn't take care of the malingering on the cognitive  
21 impairment but all we would have left then is the malingering  
22 or lying on the cognitive impairment issue.

23 THE WITNESS: That's right. And that's -- the  
24 question is that would the malingering if the case moved  
25 forward with its intentional cognitive impairment, I don't know

C8EAABEJH

Dr. First

1 what's maintaining it still. But it get's back to the issue  
2 about you know if he got a lot of attention would he stop doing  
3 it? But since it is -- we're agreeing that it's intentional I  
4 believe there should be a way for some amount of work, again,  
5 to stop doing it, whether it's working with his wife, whether  
6 it's working, finding a therapist who could work with him,  
7 whatever it is. I don't believe that the -- as I said myself,  
8 when I was visiting with him in the prison I did have a feeling  
9 that over time my work, if I was assigned to him as a patient  
10 and he was my patient, I would -- he is extremely difficult to  
11 work with. Over time I had the feeling this was somebody who I  
12 would be able to get somewhere with.

13 So I do you believe and what's probably going to  
14 happen is if we accept the fact that there's these malingering  
15 miss aspect his cognitive function would slowly improve over  
16 time with me and he would just drop that, the severe cognitive  
17 impairment aspect and get the real work with me treating the  
18 depression, treating the paranoia and getting him to work with  
19 his attorneys.

20 That is why I do believe the restoration -- there is a  
21 question of incompetence and the restoration of competence is  
22 possible. I think in a way this malingering of looking this  
23 cognitively is a bit of a red herring, it's real. It's right  
24 in your face. But that's actually kind of holding the whole  
25 thing up.

C8EAABEJH

Dr. First

1 THE COURT: All right. Do either of any of the  
2 lawyers have any further issue questions?

3 MR. DRATEL: No, your Honor.

4 MS. KOVNER: No, your Honor.

5 THE COURT: All right. Thank you, sir. Do I get any  
6 credit for first year psychiatry?

7 THE WITNESS: Very good. Well done.

8 THE COURT: Thank you very much, sir. You are  
9 excused. All right. We're off.

10 (Adjourned)